

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 101218.1 (Title)

Specific Purpose:

The purpose of this amendment is to add to the title of this section “and Parental and Authorized Representative's Rights.”

Factual Basis:

This amendment is necessary because the title should reflect that this section includes not only admission procedures but also a list of parent and authorized representative's rights. The amendment will make it easier for parents, authorized representatives, and licensees to locate this information in the regulations.

Section 101218.1(a)(1)

Specific Purpose:

The purpose of this amendment is to add the phrase "child care" for consistency and clarity.

Factual Basis:

This amendment is necessary to clarify that this section only applies to child care centers.

Section 101218.1(a)(2)

Specific Purpose:

The purpose of this amendment is to correct a grammatical error and to add the phrase "parent or" for clarity and consistency.

Factual Basis:

This amendment is necessary to clarify that parents and authorized representatives are entitled to specified information.

Section 101218.1(a)(2)(A)

Specific Purpose:

The purpose of this amendment is to make an editorial change and to add the phrase "child care" for clarity and consistency.

Factual Basis:

This amendment is necessary to clarify that these regulations apply to child care centers and to correct a grammatical error.

Section 101218.1(a)(2)(B)

Specific Purpose:

The purpose of this amendment is to correct a grammatical error and to add the phrases "parent or" and "child care" for clarity and consistency.

Factual Basis:

This amendment is necessary to clarify that parents are entitled to specified information and to clarify that these regulations apply to child care centers.

Section 101218.1(b)

Specific Purpose:

The purpose of this amendment is to split existing Section 101218.1(b) into Sections 101218.1(b) and (b)(1) and to add to proposed Section 101218.1(b) the phrases "at the time of acceptance of each child in care," "parent or," and "that include, but are not limited to, the following."

Factual Basis:

This amendment is necessary for consistency and clarity in the reformatting of this section and to specify that parents and authorized representatives are to be informed of their rights by the licensee at the time that their child is accepted into care.

Section 101218.1(b)(1)

Specific Purpose:

The purpose of this amendment is to inform parents and authorized representatives of children in any child care center, at the time of acceptance of each child in care, of their right to enter and inspect the child care center.

Factual Basis:

This amendment is necessary to specify that the licensee shall inform parents and authorized representatives of their right to enter and inspect the child care center. This right is now listed under Section 101218.1(b) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, parents, and authorized representatives may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

Section 101218.1(b)(2) (New)

Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any child care center, at the time of acceptance of each child in care, of their right to file a complaint against the licensee with the local licensing office.

Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to file a complaint against a licensee with the local licensing office in accordance with Health and Safety Code Section 1596.853. This right is listed under Section 101218.1(b) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, and parents may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

Section 101218.1(b)(3) (New)

Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any child care center, at the time of acceptance of each child in care, of their right to review the child care center's public file kept by the local licensing office.

Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to review the child care center's public file kept by the local licensing office in accordance with Health and Safety Code Section 1596.859. This right is listed under Section 101218.1(b) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, authorized representatives and parents may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

#### Section 101218.1(b)(4) (New)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any child care center, at the time of acceptance of each child in care, of their right to review at the child care center, reports of licensing visits and substantiated complaints against the licensee made during the last three years.

##### Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to review at the child care center, reports of licensing visits and substantiated complaints against the licensee made during the last three years in accordance with Health and Safety Code Section 1596.859. This right is listed under Section 101218.1(b) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, parents and authorized representatives may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

#### Section 101218.1(b)(5) (New)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any child care center, at the time of acceptance of each child in care, of their right to complain to the local licensing office and inspect the child care center without discrimination or retaliation.

##### Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to complain to the licensing office and inspect the child care center without discrimination or retaliation in accordance with Health and Safety Code Section 1596.857. This right is listed under Section 101218.1(b) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, parents and authorized representatives may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

#### Section 101218.1(b)(6) (New)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any child care center, at the time of acceptance of each child in care, of their right to request in writing that a parent not be allowed to visit the child or take the child from the child care center pursuant to a court order.

##### Factual Basis:

This section is necessary to implement Health and Safety Code Section 1596.857 to protect children in child care facilities from being taken by a parent in violation of a court order. This right is listed under Section 101218.1(b) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, parents and authorized representatives may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

#### Section 101218.1(b)(7) (New)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any child care centers, at the time of acceptance of each child in care, of their right to receive upon request of the name, address, and telephone number of the local licensing office.

##### Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to receive notification of the name, address, and telephone number of the local licensing office in accordance with Health and Safety Code Section 1596.874. This right is listed under Section 101218.1(b) along with other parental and authorized representatives rights information that were previously only listed in Health and Safety Code. These requirements are necessary so that licensees, the public, parents and authorized representatives may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

#### Section 101218.1(b)(8) (New)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any child care center, at the time of acceptance of each child in care, of their right to be informed by the licensee, upon request, of the name of any adult associated with the child care center, who has been granted a criminal record exemption, and the type of his or her

association to the child care center. In addition, the licensee is to inform the parents and authorized representatives that the name of the person may also be obtained by contacting the local licensing office.

Factual Basis:

As a result of a lawsuit filed against the CDSS by CBS Broadcasting Inc., and in accordance with the Court of Appeal of the State of California, Second Appellate District's decision filed August 21, 2001, the Department will now inform the public, upon request, the name of anyone who has been granted a criminal record exemption and the child care center with which the individual is associated.

These regulations would provide that parents and authorized representatives of children in child care centers have immediate access to information about child care staff who have been granted a criminal record exemption, from either the Department or the licensee so that they are able to make informed decisions regarding the placement and continued care of their children in child care centers.

This right is listed under Section 101218.1(b) along with other parental and authorized representatives rights. These requirements are necessary so that licensees, the public, parents, and authorized representatives may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

Section 101218.1(c) (New)

Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of their right to specified information and that these rights must be posted in a prominently, publicly accessible area in the child care center at all times.

Factual Basis:

As a result of a lawsuit filed against the CDSS by CBS Broadcasting Inc., and in accordance with the Court of Appeal of the State of California, Second Appellate District's decision filed August 21, 2001, the Department will now inform the public, upon request, the name of anyone who has been granted a criminal record exemption and the child care center with which the individual is associated.

These regulations would provide that parents and authorized representatives of children in child care centers have immediate access to information about child care staff who have been granted criminal record exemption, to allow them to make informed decisions regarding the placement and continued care of their children in child care facilities.

These requirements are necessary so that licensees, the public, parents and authorized representatives, may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information. Licensees must post the PUB 393 (8/02),

Child Care Center Notification of Parents' Rights Poster in a prominent, publicly accessible area in the child care center at all times.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the PUB 393, Child Care Center Notification of Parents' Rights Poster, Rev. 8/02. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available during the 45-day public comment period from the Department at (916) 657-2586.

#### Section 101218.1(d) (New)

##### Specific Purpose:

The purpose of this section is to require that parents and authorized representatives are provided with information about the caregiver background check process.

##### Factual Basis:

As a result of a lawsuit filed against the CDSS by CBS Broadcasting Inc., and in accordance with the Court of Appeal of the State of California, Second Appellate District's decision filed August 21, 2001, the Department will now inform the public, upon request, the name of anyone who has been granted a criminal record exemption and the child care center with which the individual is associated.

These regulations would provide that parents and authorized representatives of children in child care centers have access to information about the criminal record exemption process so they can make informed decisions about the placement of their children in licensed child care centers. Licensees must provide the parents and authorized representatives with the LIC 995E (8/02), Caregiver Background Check Process form.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995E, Caregiver Background Check Process form, Rev. 8/02. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available during the 45-day public comment period from the Department at (916) 657-2586.

Section 101218.1(e) [Renumbered from Section 101218.1(b)(1)]

Specific Purpose:

The purpose of this amendment is to require that parents and authorized representatives are provided written notification of their rights and the caregiver background check process form.

Factual Basis:

This amendment is necessary to require that licensees only use the Department's forms for notification of parental rights. The LIC 995 (8/02), Notification of Parents' Rights and the LIC 995E (8/02), Caregiver Background Check Process form must be provided to the parent and authorized representatives at the time each child is accepted into care and for all children in care on August 7, 2002. The use of these specific forms is necessary to ensure that parents and authorized representatives receive correct information regarding their rights.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995, Notification of Parents' Rights, Rev. 8/02 and the LIC 995E, Caregiver Background Check Process form, Rev. 8/02. These forms are not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available during the 45-day public comment period from the Department at (916) 657-2586. In addition, the previous revision of the LIC 995 (Rev. 7/97), is available during the 45-day public comment period from the Department at (916) 657-2586.

Section 101218.1(e)(1) [Renumbered from Section 101218.1(b)(1)(A)]

Specific Purpose:

The purpose of this amendment is to require that licensees obtain from the parent and authorized representative a signed and dated bottom portion of the LIC 995 verifying receipt of the Notification of Parents' Rights and the LIC 995E, Caregiver Background Check Process form.

Factual Basis:

This amendment is necessary to require that the licensees obtain from parents and authorized representatives a signed and dated bottom portion of the LIC 995 verifying that they have received notification of their rights and the caregiver background check process form. Requiring the licensee to retain the parent and authorized representative's signature is necessary so that the Department is able to verify whether or not a licensee complied with this requirement.



Existing Section 101218.1(b)(2) (Repealed)

Specific Purpose/Factual Basis:

This section is being repealed as it is a duplication of a new requirement at Section 101218.1(c). The requirement to post the PUB 393 (8/02), Child Care Center Notification of Parents' Rights poster replaces the requirement to post the LIC 995 (7/97).

Section 101218.1(e)(2) (New)

Specific Purpose:

The purpose of this section is for consistency and to clarify that whenever a parent or authorized representative makes a request regarding persons associated with the child care center that have received a criminal record exemption, the licensee must document the child's file and request that the parent or authorized representative also initial the notation documenting the request.

Factual Basis:

This section is necessary to require that each time a parent or authorized representative inquires about any individuals associated with the child care center that have received a criminal record exemption, the request is noted, dated and initialed by the licensee and that the child care center request the parent or authorized representative also initial the notation documenting the request. This notation is necessary so that the Department is able to verify whether or not a licensee complied with the requirement to inform parents or authorized representatives, upon request, the name of anyone associated with the child care center who has been granted a criminal record exemption.

Section 101218.1(e)(3) (New)

Specific Purpose:

The purpose of this section is to clarify that failure by the licensee to comply with these regulations will result in an assessment of civil penalties.

Factual Basis:

Failure by the licensee to comply with the requirements in Sections 101218.1(b)(8), (c), (d), (e), (e)(1), or (e)(2), shall subject the licensee to civil penalties pursuant to Section 101195. Assessment of civil penalties is necessary to ensure compliance with the regulatory requirements.

#### Section 102419 (Title)

##### Specific Purpose:

The purpose of this amendment is to add to the title of this section “and Parental and Authorized Representative's Rights.”

##### Factual Basis:

The amendment is necessary because the title should reflect that this section includes not only admission procedures but also a list of parental and authorized representative's rights. The amendment will make it easier for parents, authorized representatives, and licensees to locate this information in the regulations.

#### Section 102419(a)

##### Specific Purpose:

The purpose of this amendment is to split Section 102419(a) into Sections 102419(a) and (a)(1) and to add to proposed Section 102419(a) the phrases "parents or" and "which include, but are not limited to, the following."

##### Factual Basis:

This amendment is necessary for consistency and clarity in the reformatting of this section and to specify that the licensee shall inform parents and authorized representatives of their rights.

#### Section 102419(a)(1)

##### Specific Purpose:

The purpose of this amendment is to inform parents and authorized representatives of children in any family child care home of their right to enter and inspect the family child care home.

##### Factual Basis:

This amendment is necessary to specify that the licensee shall inform parents and authorized representatives of their right to enter and inspect the family child care home in accordance with Health and Safety Code Section 1596.857. This right is now listed under Section 102419(a) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, parents, and authorized representatives may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

#### Section 102419(a)(2) (New)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any family child care home of their right to file a complaint against the licensee with the local licensing office.

##### Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to file a complaint against a licensee with the licensing office in accordance with Health and Safety Code Section 1596.853. This right is listed under Section 102419(a) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, and parents may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

#### Section 102419(a)(3) (New)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any family child care home of their right to review the family child care home's public file kept by the local licensing office.

##### Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to review the family child care home's public file kept by the local licensing office in accordance with Health and Safety Code Section 1596.859. This right is listed under Section 102419(a) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, authorized representatives and parents may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

#### Section 102419(a)(4) (New)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any family child care home of their right to review at the family child care home, reports of licensing visits and substantiated complaints against the licensee made during the last three years.

Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to review at the family child care home, reports of licensing visits and substantiated complaints against the licensee made during the last three years in accordance with Health and Safety Code Section 1596.859. This right is listed under Section 102419(a) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, parents and authorized representatives may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

Section 102419(a)(5) (New)

Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any family child care home of their right to complain to the local licensing office and inspect the family child care home without discrimination or retaliation.

Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to complain to the local licensing office and inspect the family child care home without discrimination or retaliation in accordance with Health and Safety Code Section 1596.857. This right is listed under Section 102419(a) along with other parental and authorized representative rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, parents and authorized representatives, may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

Section 102419(a)(6) (New)

Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any family child care home of their right to request in writing that a parent not be allowed to visit the child or take the child from the family child care home pursuant to a court order.

Factual Basis:

This section is necessary to protect children in family child care homes from being taken by a parent in violation of a court order pursuant to Health and Safety Code Section 1596.857. This right is listed under Section 102419(a) along with other parental and authorized representatives rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, parents and authorized

representatives, may be able to locate in one area of the regulations, all of the parental rights information.

#### Section 102419(a)(7) (New)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any family child care home of their right to receive from the licensee notification of the name, address, and telephone number of the local licensing office.

##### Factual Basis:

This section is necessary to specify that the licensee shall inform parents and authorized representatives of their right to receive notification of the name, address, and telephone number of the local licensing office. This right is listed under Section 102419(a) along with other parental and authorized representative rights information that were previously only listed in the Health and Safety Code. These requirements are necessary so that licensees, the public, parents and authorized representatives, may be able to locate in one area of the regulations, all of the parental and authorized representatives rights information.

#### Section 102419(a)(8)

##### Specific Purpose:

The purpose of this section is to inform parents and authorized representatives of children in any family child care home of their rights to be informed by the licensee, upon request, the name of any adults associated with the family child care home, that have been granted a criminal record exemption, and the type of his or her association to the family child care home. In addition, the licensee is to inform the parents and authorized representatives that the name of the person may also be obtained by contacting the local licensing office.

##### Factual Basis:

As a result of a lawsuit filed against the CDSS by CBS Broadcasting Inc., and in accordance with the Court of Appeal of the State of California, Second Appellate District's decision filed August 21, 2001, the Department will now inform the public, upon request, the name of anyone who has been granted a criminal record exemption and the child care center with which the individual is associated.

These emergency regulations would provide that parents and authorized representatives of children in family child care homes have access to information about child care staff who have been granted a criminal record exemption, to allow them to make informed decisions regarding the placement and continued care of their children in family child care home.

This right is listed under Section 102419(a) along with other parental and authorized representatives rights. These requirements are necessary so that licensees, the public,

parents and authorized representatives, may be able to locate in one area of the regulations, all of the parental and authorized representative rights information.

#### Section 102419(b) (New)

##### Specific Purpose:

The purpose of this section is to require that the licensee post a poster with the same information previously provided in proposed repealed Section 102419(a)(3).

##### Factual Basis:

The Department has made a policy decision that requiring the licensee to prominently display a poster advising parents and authorized representatives of their rights (PUB 394 (8/02), Family Child Care Home Notification of Parents' Rights) is more appropriate than requiring the licensee to post a form with this information.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the PUB 394, Family Child Care Home Notification of Parents' Rights, Rev. 8/02. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available during the 45-day public comment period from the Department at (916) 657-2586.

#### Section 102419(c) (New)

##### Specific Purpose:

The purpose of this section is to require that licensees shall provide parents and authorized representatives with a form describing the caregiver background check process.

##### Factual Basis:

This section is necessary to require that licensees only use the Department's form for the caregiver background check process. The LIC 995E (8/02), Caregiver Background Check Process form must be provided to the parent and authorized representatives at the time each child is accepted into care and for all children in care on August 7, 2002 as specified in proposed Section 102419(d). The use of this specific form is necessary to ensure that parents and authorized representatives receive correct information.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995E, Caregiver Background Check Process form, Rev. 8/02. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available during the 45-day public comment period from the Department at (916) 657-2586.

Section 102419(d) [Renumbered from Section 102419(a)(1)]

Specific Purpose:

The purpose of this amendment is to require that parents and authorized representatives are provided with written notification of their rights and caregiver background check process form.

Factual Basis:

This amendment is necessary to require that licensees only use the Department's forms for notification of parental rights. The LIC 995A (8/02), Family Child Care Home Notification of Parents' Rights and the LIC 995E (8/02), Caregiver Background Check Process form must be provided to the parent and authorized representatives at the time each child is accepted into care and for all children in care on August 7, 2002. The use of these specific forms is necessary to ensure that parents and authorized representatives receive correct information regarding their rights.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995A, Notification of Parents' Rights, Rev. 8/02 and the LIC 995E, Caregiver Background Check Process form, Rev. 8/02. These forms are not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available during the 45-day public comment period from the Department at (916) 657-2586.

Section 102419(d)(1) [Renumbered from Section 102419(a)(2)]

Specific Purpose:

The purpose of this amendment is to require that licensees obtain from the parent and authorized representative a signed and dated bottom portion of the LIC 995A verifying receipt of the Family Child Care Home Notification of Parents' Rights and the LIC 995E, Caregiver Background Check Process form.

Factual Basis:

This amendment is necessary to require that the licensees obtain from parents and authorized representatives a signed and dated bottom portion of the LIC 995A verifying that they have received notification of their rights and the caregiver background check process form. Requiring the licensee to retain the parent and authorized representative's signature is necessary so that the Department is able to verify whether or not a licensee complied with this requirement.

Existing Section 102419(a)(3) (Repealed)

Specific Purpose/Factual Basis:

This section is being repealed as it is a duplication of a new requirement at Section 102419(b). The requirement to post the PUB 394 (8/02), Family Child Care Home Notification of Parents' Rights poster replaces the requirement to post the notice form.

Section 102419(d)(2)

Specific Purpose:

The purpose of this section is for consistency and clarity that whenever a parent or authorized representative makes a request regarding persons associated with the family child care home that have received a criminal record exemption, the licensee must document the child's file and request that the parent or authorized representative also initial the notation documenting the request.

Factual Basis:

This section is necessary to require that each time a parent or authorized representative inquires about any individuals associated with the family child care home that have received a criminal record exemption, the request is noted, dated and initialed by the licensee and that the family child care home request the parent or authorized representative also initial the notation documenting the request. This notation is necessary so that the Department is able to verify whether or not a licensee complied with the requirement to inform parents or authorized representatives, upon request, the name of anyone associated with the family child care home who has been granted a criminal record exemption.

Section 102419(d)(3) (Reserved)

Specific Purpose/Factual Basis:

This section is reserved. Following the public hearing, the Department will replace "Reserved" with regulatory language or a section title.



Section 102419(d)(3)(A) (New)

Specific Purpose:

The purpose of this section is to clarify that failure by the licensee to comply with specified regulations will result in an assessment of civil penalties.

Factual Basis:

Failure by the licensee to comply with the requirements in Sections 102419(a)(8), (b), (c), (d), (d)(1), or (d)(2), shall subject the licensee to civil penalties. The assessment of civil penalties is necessary to ensure compliance with the regulatory requirements and is consistent with Health and Safety Code Section 1597.56.

Section 102419(d)(3)(B) (New)

Specific Purpose:

The purpose of this section is to clarify that failure by the licensee to comply with specified regulations will result in an assessment of civil penalties.

Factual Basis:

When a licensee subsequently violates any provision of Sections 102419(a)(8), (b), (c), (d), (d)(1), or (d)(2) within 12 months of the initial citation, the Department shall assess a civil penalty of \$150 plus an assessment of \$50 per day until the deficiency is corrected. The assessment of civil penalties is necessary to ensure compliance with the regulatory requirements and is consistent with Health and Safety Code Section 1597.56.

Section 102419(d)(3)(C) (New)

Specific Purpose:

The purpose of this section is to clarify that failure by the licensee to comply with specified regulations will result in an assessment of civil penalties.

Factual Basis:

When a licensee violates any provision of Sections 102419(a)(8), (b), (c), (d), (d)(1), or (d)(2) within 12 months of the citation and assessment in Section 102419(b)(3)(B), the Department shall assess a civil penalty of \$150 plus an assessment if \$150 per day until the deficiency is corrected. This section is consistent with Health and Safety Code Section 1597.56

Section 102419(e) [Renumbered from Section 102419(b)]

Specific Purpose:

The purpose of this amendment is to replace "responsible" with "parent or" and to add the phrase "family child care" for clarity and consistency.

Factual Basis:

This amendment is necessary for clarity and consistency. Section 102419(b) is renumbered to Section 102419(e) to accommodate the reorganization of Section 102419. This proposed amendment clarifies that the regulation applies to parents and authorized representatives.

Section 102419(e)(1) [Renumbered from Section 102419(b)(1)]

Specific Purpose:

The section is amended to add the phrases "family child care" and "the parent or" for clarity and consistency.

Factual Basis:

This amendment is necessary for clarity and consistency.

Section 102419(f) [Renumbered from Section 102419(c)]

Specific Purpose:

The purpose of this amendment is to make editorial changes and to add the phrases "parent or" and "family child care" for clarity and consistency.

Factual Basis:

This amendment is necessary for clarity and consistency. Section 102419(c) is renumbered to Section 102419(f) to accommodate the reorganization of Section 102419. This proposed amendment clarifies that the regulation applies to parents and authorized representatives and specifically references family child care homes.

Section 102419(f)(1) [Renumbered from Section 102419(c)(1)]

Specific Purpose:

The purpose of this amendment is to replace "family child care home" with the "licensee", to add the phrase "against any child or any child's parent or authorized representative," and to make other editorial changes for clarity and consistency.

Factual Basis:

This amendment is necessary to clarify if the licensee denies a parent or authorized representative the right to enter the family child care home or retaliates against any child, parent or authorized representative the Department will issue a warning citation to the licensee. Also, editorial changes are proposed for clarity and consistency.

Section 102419(f)(3)(B) [Renumbered from Section 102419(c)(3)(B)]

Specific Purpose:

This section is amended to repeal the words "noncustodial," the phrase "or guardians" to replace "responsible" with "parent or," and to add the phrase "who is subject to a court order denying him/her contact with the child."

Factual Basis:

This amendment is necessary to clarify that a parent who is subject to a court order denying him or her contact with a child shall be denied access to the family child care home by the licensee. Also, editorial changes are proposed for clarity and consistency.

Section 102419(g) [Renumbered from Section 102419(d)]

Specific Purpose:

The purpose of this amendment is to add a specific form, the LIC 995A (8/02), Family Child Care Home Notification of Parents' Rights and to add the phrase "parent or" for clarity and consistency.

Factual Basis:

This amendment is necessary for clarity and consistency. This proposed regulation clarifies that if the parent refuses to sign the LIC 995A (8/02), Family Child Care Home Notification of Parents' Rights, the licensee must make a note to that effect in the child's file.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, LIC 995A, Family Child Care Home Notification of Parents' Rights, Rev. 8/02. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available during the 45-day public comment period from the Department at (916) 657-2586.

Section 102421(a)

Specific Purpose:

The purpose of this amendment is to correct a cross-reference to a section referred to for children's records.

Factual Basis:

This amendment is necessary to make editorial changes to reflect the correct regulation for children's records. Section 102419(a)(2) has been changed to Section 102419(d).

Section 102421(c)

Specific Purpose:

This section is amended to replace "family child care home" with "licensee" and to add the phrase "parent or."

Factual Basis:

This amendment is necessary to make editorial changes for clarity and consistency.

b) Identification of Documents Upon Which Department Is Relying

CBS, INC v. The Superior Court of Los Angeles County, State Department of Social Services (2001) 91 Cal.App.4<sup>th</sup> 892

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

d) Statement of Alternatives Considered

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would lessen any adverse impact on small business.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered at public hearings held October 15, 16, and 17, 2002 in Monterey Park, Sacramento, and Oakland. The public hearings were preceded by a 45-day public comment period from August 30, 2002 through October 17, 2002. There was testimony presented at the October 15, 16, and 17, 2002 public hearings by the following:

Monterey Park – October 15, 2002:

1. Denise Dowell, United Child Care Union/American Federation of State, County and Municipal Employees - (Dowell) \*
2. Rosie Kennedy, Family Child Care Association of San Francisco/United Child Care Union - (Kennedy) \* \*\*
3. Cecilia Medina - (Medina)
4. Anne Foley, California Federation of Family Day Care Association - (Foley)
5. Joseph Lewis, City of Compton - (Lewis)
6. Nancy Wyatt - (Wyatt) \*\*
7. Barbara Tinsley, Family Child Care Educators Association - (Tinsley) \*\*
8. Dee Tucker, California Child Development Administrators Association - (Tucker)
9. Blanche Nelson - (Nelson)
10. Wendy Tseng, Chinese Family Day Care Association - (Tseng)

Sacramento – October 16, 2002:

1. Renee Herzfeld, California Child Development Administrators Association - (Herzfeld)
2. Donita Stromgren, California Child Care Resource and Referral Network - (Stromgren) \*\*
3. Rosie Kennedy, Family Child Care Association of San Francisco/United Child Care Union - (Kennedy) \* \*\*
4. Denise Dowell, United Child Care Union/American Federation of State, County and Municipal Employees - (Dowell) \*
5. Stephanie Woods - (Woods)

Oakland – October 17, 2002:

1. Elizabeth Harris, City of Alameda/Child Care Work Group - (Harris)
2. Melinda Felice, San Francisco Child Care Planning and Advisory Council - (Felice) \*\*
3. Charlene Casey-Lerma, Tenderloin Child Care Center/San Francisco Providers' Association - (Casey-Lerma)
4. Mardi Lucich, California Child Care Health Program - (Lucich)
5. Sujatha Branch, Child Care Law Center - (Branch) \*\*
6. Denise Dowell, United Child Care Union/American Federation of State, County and Municipal Employees - (Dowell) \*
7. Paul Flowers, San Juan Valley Child Care Association/Diablo Vista Child Care Association - (Flowers)

8. Joe Wilson, Coleman Advocates for Children and Youth - (Wilson)
9. Kerry Woodward, Cedar Creek Montessori School - (Woodward)
10. Susan Miranda, Sonoma County Child Care Association - (Miranda)
11. Melanie Rincon, Sonoma County Child Care Association - (Rincon)
12. Marie Monrad, American Federation of State, County and Municipal Employees - (Monrad)
13. Judy Kriege, Bananas Child Care Resource and Referral Agency - (Kriege)
14. Margaret Jerene, Florence Crittenden Services of San Francisco - (Jerene) \*\*

\* Testified at more than one public hearing.

\*\* Submitted written comments in addition to public hearing testimony.

Also, written testimony was received during the public comment period from the following:

1. Patrica LeBert - (LeBert)
2. Jeneane Stevens, Celebration Christian Preschool - (Stevens)
3. Walt Hampe & Darlene Howell, Napa County - (Hampe/Howell)
4. Nancy Wyatt - (Wyatt)
5. Nancy Brown - (Brown)
6. Paula VanGalio, Marian Children's Center – (VanGalio)
7. Esther Picazo, Family Service Agency of San Francisco – (Picazo)
8. Private Child Care Network (signed by 7 members) – (PCCN)
9. Scott Moore, Kidango – (Moore)
10. Cheryl Davis, Nutwood Street Baptist Church – (Davis)
11. Alix Hall & Joyce Stone, Sacramento County Local Child Care and Development Planning Council - (Hall/Stone)
12. The Professional Association for Childhood Development - (PACE)
13. Robert Fellmeth & Debra Back, Children's Advocacy Institute – (Fellmeth/Back)
14. Sheril Martinez - (Martinez)
15. Megan - (Megan)
16. Rosie Kennedy, Family Child Care Association of San Francisco/United Child Care Union - (Kennedy)
17. Janice Tronick and Jill Eiland, KinderCare – (Tronick/Eiland)
18. Dave Bakay, Davis Licensed Family Day Care Providers – (Bakay)
19. Sarah Johnson – (Johnson)
20. Ninfa Lunardelli – (Lunardelli)
21. Barbara Tinsley, Family Child Care Educators Association – (Tinsley)
22. Margaret Jerene, Florence Crittenton Services – (Jerene)
23. Melinda Felice, San Francisco Child Care Planning and Advisory Council - (Felice)
24. Donita Stromgren, California Child Care Resource and Referral Network - (Stromgren)
25. Sujatha Branch, Eve Herschopf, and Ava Yajima, Child Care Law Center - (Branch)
26. Shun Yee Kwong – (Kwong)
27. Leatrice Knox – (Knox)
28. Robin Palmerston, The Children's House Montessori School – (Palmerston)

The summarized public hearing and written comments and the Department's responses follow:

### General

#### 1) Comment:

"I would like to start by saying that the governors emergency regulations regarding criminal records exemptions is way out of line, to infringe on my privacy right is wrong. It has nothing to do with the children on their parents. I do not ask them if they have a record. People are intiled [sic] to their privacy. It has hindered my business. I do not think it is fair that child providers have their privacy right not respected. Teachers have their privacy and nobody questions them, and you have yours.

"Two years ago I received a DUI on New Years eve. I told the parents of the children in my care, that was my choice. It didn't matter to them, because I took excellent care of their children. But for new parents that are looking for child care and to call licensing and just to hear that I have a criminal record with no explanation it is not fair to them or me, but they call someone else." (LeBert)

#### Response:

California case law has established that child care facility criminal record exemptions issued by the California Department of Social Services are a matter of public record and must be disclosed upon request. (CBS Broadcasting Inc. v. Superior Court (2001) 91 Cal.App.4<sup>th</sup> 892). While CBS only requested a list of exemptions issued since 1995, the Court of Appeal did not limit its holding to exemptions issued since 1995. Consequently, all criminal record exemptions are public information regardless of when the exemption was issued. The Court also stated that the nature of the crime was privileged information. Therefore, the Department is prohibited from disclosing the actual crime.

At the time of acceptance of each child into care, the licensee must provide the parent with the LIC 995E, Caregiver Background Check Process form. The CDSS developed the LIC 995E in order to provide parents with information about the criminal record exemption process, including a list of crimes for which an exemption is prohibited.

#### 2) Comment:

"I would like to voice my concern regarding Criminal Record exemption issue. While I believe the intent to be good, I am concerned that this is too wide sweeping. All conscientious Directors are going to weed out those who would be a threat to the children, this regulation would include those whose 'mistake' (which has nothing to do with children) will keep them from moving on with their lives. In a climate where finding good teachers is becoming more and more difficult, I urge you to rethink this regulation." (Stevens)

Response:

Whether or not a child care facility director or licensee chooses to hire an individual with a criminal record exemption is outside the scope of these proposed amendments.

3) Comment:

"Thank you for the opportunity to provide comments on the proposed Child Care Provider Notification Regulations. The following comments and recommendations are based on a review by members of the Napa County Child Care Planning Council." (Hampe/Howell)

Response:

The CDSS appreciates the opportunity to address your comments. Please see the testifier's specific comments at Comments 76), 81), 116), and 154).

4) Comment:

"Please reconsider the new regulations about fingerprint clearance. I believe that the plan to inform is not being accomplished by this regulation." (Brown)

Response:

Please refer to response to Comment 1), second paragraph.

5) Comment:

"1. Parents are not given information that helps them feel safe about the person on a waiver working with their child, rather creates suspicion. Suspicion, mistrust of the caregiver and the director and program." (Brown)

Response:

Please refer to response to Comment 1), second paragraph.

6) Comment:

"2. The teacher is not given the rights that other violaters are awarded, the right to privacy." (Brown)



Response:

Please refer to response to Comment 1).

7) Comment:

"3. Instead, the program should write a policy about waived employees and make it available by signature to all families like the rights statement. The policy can be regulated to include what types of convictions the center director considers as applicable past convictions that may be employed in the teaching profession." (Brown)

Response:

Please refer to response to Comment 1), second paragraph.

8) Comment:

"4. Are K-12 teachers, principals, bus drivers and support staff subjected to these regulations?" (Brown)

Response:

Public school teachers, principals, bus drivers and support staff in license exempt facilities are outside the scope of the proposed amendments.

9) Comment:

"Does this apply to everyone that has contact with children, i.e., foster parents, teachers, guardians, licensing staff, food program personnel, fire inspectors, volunteers and all others who might have contact with children?" (PCCN)

Response:

Currently foster parents, teachers in license exempt settings, guardians, licensing staff, food program personnel, and fire inspectors are outside the scope of the proposed amendments.

Volunteers in licensed child care facilities are exempt from the criminal background check process only if they are directly supervised by the licensee or an employee of the facility with a criminal record clearance or exemption, spend no more than 16 hours per week at the facility and are not left alone with children.

10) Comment:

"Could contribute to underground, unregulated child care, possibly endangering small children." (PCCN)

Response:

Providing unlicensed child care is illegal and a person is subject to \$200 per day in civil penalties for each day of unlicensed operation.

11) Comment:

"How does this new law impact license exempt day care that choose to fly below the radar of scrutiny for some reason?" (PCCN)

Response:

License exempt care is outside the scope of the proposed amendments.

12) Comment:

"What about the fear-factor from parents, not knowing what crime was committed?" (PCCN)

Response:

Please refer to response to Comment 1), second paragraph.

13) Comment:

"Licensing should be responsible for giving the name of the exempted person and should document the parent's inquiry." (PCCN)

Response:

CDSS believes that by requiring the licensee to provide the information, if asked by the parent or authorized representative of the child, about child care staff who have been granted a criminal record exemption, allows them to make informed choices about the placement of their child. The Department does not believe this is a burden on providers to do this.

The regulations ensure that parents of children in child care centers and family child care homes have *immediate* access to information about the placement and continued care of their children in licensed child care facilities.

14) Comment:

"This could contribute to loss of business for child care providers and child care availability for working parents." (PCCN)

Response:

Less than 2% of the individuals who go through the background check process in order to be licensed, work or reside in a child care facility receive a criminal record exemption. Based on the small percentage of exempted individuals in child care facilities, the impact on the industry is minimal.

15) Comment:

"We already have a child care staffing crisis; facilities may choose to not hire anyone that might require an exemption to avoid complications." (PCCN)

Response:

Please refer to responses to Comments 14) and 21).

16) Comment:

"The requirement of documentation – should a parent ask about an exempted person – needs to be better defined." (PCCN)

Response:

Child Care Center General Licensing Requirements Section 101218.1(e)(1), provides that whenever a parent or authorized representative makes a request pursuant to Section 101218.1(b)(8), the child care center shall note, date, and initial the request in the child's file. The child care center shall request that the parent or authorized representative also initial the notation documenting the request.

Family Child Care Home Regulations Section 102419(d)(2), provides that whenever the child's parent or authorized representative makes a request, the licensee shall note, date and initial the request in the child's file and request that the parent or authorized representative also do the same.

The CDSS believes that these two sections clearly and concisely define the requirement for documentation.

17) Comment:

"The amount of the civil penalty regarding this seems to be very harsh." (PCCN)

Response:

Under the proposed amendments civil penalties are *only* assessed after a licensee fails to complete a plan of correction by the date they agreed upon with the Licensing Program Analyst as documented on the LIC 809, Licensing Report. Civil penalties are used as a tool by the CDSS to ensure compliance.

18) Comment:

"Consideration should be given as to the severity of the crime and how long ago the crime was committed." (PCCN)

Response:

Please refer to response to Comment 1).

19) Comment:

"Parents may demand information about the actual crime or choose to move on ... another facility." (PCCN)

Response:

The only information available to the licensee is whether or not there are any exempted individuals associated with or living in the child care facility. Even if the licensee knows what the criminal record contains, they are under no obligation to provide that information to parents. Please refer to response to Comment 1).

Whether or not parents choose to move their children to another facility is outside the scope of the proposed amendments.

20) Comment:

"Applicants may purger themselves in the process of being hired." (PCCN)

Response:

If the criminal background check reveals any conviction(s) that they did not disclose, their failure to disclose the conviction(s) will result in an exemption denial, license application denial, license revocation, or exclusion from a licensed facility.

21) Comment:

"Current employees could be dismissed causing impact to the State Unemployment Fund." (PCCN)

Response:

Please refer to response to Comment 14).

Whether an employer chooses to change their hiring or retention practices falls outside the scope of the proposed amendments.

22) Comment:

"Consumer Education is needed as to the non-exempt crimes." (PCCN)

Response:

Please refer to response to Comment 1), second paragraph.

23) Comment:

"Losses relating to staffing costs and the need of hiring replacement workers." (PCCN)

Response:

Please refer to response to Comment 14).

24) Comment:

"Wording: Background checks instead of Criminal clearance." (PCCN)

Response:

This wording conforms to the statutory requirements of the California Health and Safety Code, the law upon which Title 22, Division 12 Regulations are based. The Health and Safety Code specifies in part in Section 1596.871(a), before issuing a license or special permit to any person to operate or manage a day care facility, the Department shall secure from the appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime. Subsection (f)(1) specifies in part that after review of the record, the Director may grant an exemption from disqualification for a license or special permit.

25) Comment:

"No name identification." (PCCN)

Response:

Please refer to response to Comment 1).

26) Comment:

"We are asking for careful consideration of all of these concerns. Thank you for listening to us." (PCCN)

Response:

Thank you for your comments. The CDSS has carefully reviewed each of the comments made by the PCCN and appreciates the opportunity to respond to them. Please see the testifier's specific comments at Comments 9) through 25).

27) Comment:

"Thank you for this opportunity to respond to the criminal clearance emergency regulations executed by Governor Davis. My name is Scott Moore, and I am Director of Program Quality at Kidango, the largest non-profit early education institution in the Bay Area. We serve over 2,000 children at 35 centers and employ 300 teachers.

"First, it is important to say that the prior criminal clearance exemption process administered by DSS was flawed. It is good that we are focusing on how to improve this process. However, the current emergency regulations that the Governor has imposed are unfortunately much more damaging to children than the prior regulations ever were." (Moore)

Response:

The CDSS appreciates the opportunity to respond to your comments. Please see the testifier's specific comments at Comment 28).

28) Comment:

"Four of our teachers have criminal clearance exemptions, which constitutes less than 2% of our staff. We have had all parents sign their new Parents Rights form and they have all received the handout on the emergency regulations. I have not had one parent question or complaint; we have over 3,000 parents.

"I met with each of the four teachers, who are all not just good, but great teachers. Three of the four teachers broke down and cried. All four of them considered quitting not just our organization, but the entire field of early education. Research on child development has shown that when a teacher leaves a classroom it is not just a disruption to young children, it is detrimental to their development.

"Luckily, so far none of these teachers have left. That is because we have made a concerted effort to support them, and to show them how important they are to us and to the children and families they serve. Our teachers are heroes. They are paid little, but they work extremely hard. Many of them have young children or their own, but

after work they take night classes and weekend classes in order to qualify for teaching permits, get their AA, their B.A., and their Masters.

"Our industry is going through a lot of change. We are raising the bar for quality, we are raising the bar for our teacher qualifications, but the State has not given our teachers raises. What has the State done? Its given us unfunded mandate after unfunded mandate, including these emergency regulations, which remind me more of the Reformation than they do of reform.

"These emergency regulations do not safeguard our children. They just hurt our teachers and make it more difficult for us to provide the high quality early care and education our children need and deserve. I hope you abolish these emergency regulations, put together a balanced, representative committee, and hold public hearings on their recommendations before you implement them. Thank you." (Moore)

Response:

In addition to the Public Hearings held in Monterey Park, Sacramento and Oakland in October, 2002 the CDSS held stakeholders meetings in May, 2002 in Los Angeles and Sacramento and in July 2002 in Sacramento. The stakeholders groups were comprised of child care program administrators, school district representatives, family child care home providers, Head Start representatives, parents of children in care, teachers and aides in licensed facilities.

Please refer to response to Comment 14).

29) Comment:

"I am the Children's Director at Nutwood Street Baptist Church. It was my understanding that background checks and fingerprinting do not apply to volunteers who teach or work with children on Sunday mornings. We are not a licensed child care facility. It was brought to my attention that the laws have changed and all of my volunteers have to be fingerprinted and have background checks." (Davis)

Response:

Please refer to response to Comment 8).

30) Comment:

"Members of the Sacramento County Local Child Care & Development Planning Council further request that:

"1) CDSS look at the types of crimes not exempted and expand the list if necessary;" (Hall/Stone)

Response:

The comment is outside the scope of the proposed amendments. Nonexemptible crimes are specified in the Health and Safety Code.

31) Comment:

"Members of the Sacramento County Local Child Care & Development Planning Council further request that: ...

"2) That CDSS enforce the current regulations and not give exemptions to those who are prohibited from having them;" (Hall/Stone)

Response:

The CDSS conforms to statutory and other regulatory requirements when considering all requests for criminal record exemptions. Exemptions are not granted for specified crimes.

32) Comment:

"Members of the Sacramento County Local Child Care & Development Planning Council further request that: ...

"3) That CDSS assume the responsibility for informing parents of any person in a program that has received an exemption, thus taking the burden off of the licensed child care center or home;" (Hall/Stone)

Response:

Please refer to response to Comment 13).

33) Comment:

"Members of the Sacramento County Local Child Care & Development Planning Council further request that: ...

"4) Examine the types of crimes and the time period that has elapsed since the conviction, and expunge the records of certain providers according to the procedures established by the California Department of Justice." (Hall/Stone)



Response:

Please refer to response to Comment 1). Additionally, the CDSS does not have the statutory authority to expunge criminal records.

34) Comment:

"Thank you for this opportunity to comment on this set of proposed regulations. We stand ready to work with the Department to develop reasonable and legal policies concerning the notice of parents about exempt employees." (PACE)

Response:

The CDSS appreciates the opportunity to address your comments and appreciates PACE's willingness to work with the Department.

35) Comment:

"The Children's Advocacy Institute (CAI), located at the University of San Diego School of Law, seeks to improve the health, safety, and well-being of California's children. CAI advocates in the legislature to make laws, in the courts to interpret laws, before administrative agencies to implement laws, and before the public to educate and build support for laws to improve the status of children statewide and nationwide. CAI educates policymakers about children's needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury.

"CAI supports the above-referenced rulemaking package in substance and agrees with the overall goal of the changes made by the Department of Social Services. However, we have two concerns." (Fellmeth/Back)

Response:

The Department appreciates the testifier's comments, please see the specific comments and the Department's responses at Comments 143) and 152).

36) Comment:

"As these stories demonstrate, notifying parents of a teacher's criminal record without explaining the nature of the crime is humiliating to teachers who have been approved by the State to work with children. The regulations should account for privacy interests by, at a minimum, placing time limits on disclosure of criminal records, or by limiting disclosure to types and degrees of crimes." (Tronick/Eiland)

Response:

Please refer to response to Comment 1).

37) Comment:

"Do what is right – ignore the scare tactics of sensational newspapers. Drop the 'emergency' regulations regarding criminal exemptions." (Bakay)

Response:

Please refer to response to Comment 1).

38) Comment:

"Persons with serious violations should not be granted exemptions. In my case, my husband, Ronald J. Lunardelli, over 20 years ago, as a youngster was charged with auto theft. This violation was paid with time served. This has nothing to do with any related work with children. My husband learned his lesson and has raised and financially supported our six children, who are now adults and has been an active teamster for 30 yrs. This is creating an undue hardship in what's an already difficult situation. Please help us sift with reasonableness and with an appropriate view of fairness on this matter." (Lunardelli)

Response:

The CDSS agrees with your comment that persons with serious violations should not be granted an exemption. Additionally, please refer to response to Comment 1).

39) Comment:

"I am a family child care provider. I object to the legislation regarding the criminal record exemptions for child care providers." (Kwong)

Response:

Please refer to response to Comment 1).

40) Comment:

"... and we ask, please -- we thank the Licensing Department, especially here in Los Angeles. We have an excellent relationship with the licensing offices; and together, we're trying to desperately to improve family child care, and doing everything possible to support their efforts and working on these problems. And we would like to continue this effort, to work on legitimate issues of real impact to children and parents. And we feel that that is going to provide quality child care; and that the children are going to

benefit. Going and attacking people that have done -- made a mistake, possibly 20 or more years ago is not the way to go.

"And we can't respond to the media. It's just not a good -- it's not going to help children at all. So, anyway, I thank you for the opportunity, and I hope you can help out with this." (Foley)

Response:

CDSS appreciates the opportunity to address your concerns. Please refer to response to Comment 1).

41) Comment:

In his testimony, the testifier has issues with the level of service provided by the Department, more specifically the Department's Community Care Licensing Division. Such as, "And when this emergency legislation was implemented, they did not give the Department of Social Services, background-check people, any kind of sensitivity training. ...They're insensitive to problems. ... they don't have the empathy required, that they require of the parents themselves, ... It's a hypocritic situation going on here." (Lewis)

Response:

The Department appreciates the testifier's comments and has considered the comments in their entirety. The Department disagrees with the testifier's assessment of Department staff and furthermore, the level of service issue is outside the scope of these regulations.

42) Comment:

"Now, we can all understand the spirit of this legislation, which is, if a person abused a child, they should not be in this business. If the person has sexually-abused a child, beat a child -- demonstrated any mishandling of a child, they should not be in this business. I agree. But if a person has an offense that's not child-related, and they have went through the exemption process, and they have proven that they've been a fine, upstanding citizen since then, what's the problem? Sometimes those people are some of the most important people that can help children ... because they have real life experience. It is not true that Community Care Licensing licenses perverts and child abusers. They do not do that. It is only the workers that the child care providers hire that is under scrutiny." (Lewis)

Response:

Please refer to response to Comment 1).

43) Comment:

"Now, this emergency legislation ... has devastated some child care centers; ... there's something that is called, from the prime sponsors who pay for the child care, it's called, 'Parents' Choice.' That means that a licensed provider does not have to be a licensed provider in order to provide services. So ... why be connected with Community Care Licensing? Why not just do two shifts of six children each? You've still got 12, and you don't have to deal with Community Care Licensing, doing the 'Big Brother' act on you..." (Lewis)

Response:

This comment is outside the scope of the proposed amendments.

44) Comment:

"Now insofar as letting parents know that there is an ex-felon as a staff member, personally, I have no problem with that. It's how it's done and to what extent, how much information is given." (Lewis)

Response:

Please refer to response to Comment 1).

45) Comment:

"... put some moratoriums on the criminal offenses that you see is so terrible. ... if it's in the last five years, okay, then that person can't do anything for the last five years. But 33 years ago? That's ridiculous. 33 years ago a person got into trouble; since then, they've got three degrees, and they're working in the child care business for 20 years; opened up three centers, five child care centers, five home day cares, and served as the administrative consultant to many others, teach child development. That person is told, 'You can't work with kids no more; as a matter of fact, you haven't demonstrated rehabilitation and, therefore, you've got to go.' That was me, ... When I was 19 years old, I did something I wasn't supposed to do, non-child related. ... I was supposed to have paid my debt to society, I was supposed to have been forgiven. I went to college ... and got three degrees: Psychology, sociology, economics. I worked in the child care business; worked with children, to make sure that children don't make the same mistakes that I made and the other people that go through that critical age range makes.

"I have more to say to those kids than some of the average people in the background check of the Division of Social Services. But I'm told -- and I have been exempt. I was exempt in 1993. I demonstrated rehabilitation. So now they're going back through the files; right. ... '... you cannot work no longer ...' My job is over. The director is stressed out, ... My skills cannot be utilized for him now." (Lewis)

Response:

Please refer to responses to Comments 1) and 2).

46) Comment:

"So I'm in a good position to help. But I was told by the Department of Social Services, 'You've got to reprove yourself. Yes, we exempted you in '93, but now that's no longer any good.'" (Lewis)

Response:

This comment is outside the scope of the proposed amendments.

47) Comment:

"... we may be misleading people. Right now, as the regulations stand, there is a provision that when parents volunteer for us, they don't need to have a clearance. ... some of the parents that I've got right now, I know they have criminal records, I know they're having problems with spousal abuse. And what sense does this make? You know, I'm not going to use them as volunteers because I know them. Maybe that's the bottom line: You just have to know people. So it's sort of like the idea here is that if you're in the field of child care, that's the people we need to look at; not people who are just parents. I just don't know that that really makes sense." (Wyatt)

Response:

Please refer to response to Comment 9) paragraph 2, regarding the exemption criteria for volunteers in child care facilities.

48) Comment:

"... I want to tell you that people that I have known in my life, with who are those with the most character, who have the most conscience, were people who were passing around joints. Now I didn't; but I love these people. And they have gone on in their lives unconvicted, fortunately, to do a lot of good things and hold jobs that they probably couldn't hold, if they were convicted. ... So if we're going to give parents the idea that if they have a misdemeanor record and they have an exemption, that they're more likely to not have character, we may be misleading them. They still need to find out on an individual basis what this person is all about." (Wyatt)

Response:

Please refer to response to Comment 1), second paragraph.

49) Comment:

"There's some misinterpretation already going on out there about how to implement these regulations. ... one of the center directors was telling me that Community Care Licensing was on her about not having posted the names of people who had criminal-record exemptions. I said, '... It's my understanding that you're just supposed to give their names, if asked?' She said, 'Oh, no. Maybe because there are different regs for family child care providers than for center providers.' So I went back to the Internet, and I checked to see; and sure enough, they had the same parent ... notices, the LIC 995(e), that's in common. And it says, 'if asked.'" (Wyatt)

Response:

Please refer to response to Comment 16).

50) Comment:

"... a provider who had a ... lifelong friend and apparently a lifelong friend of many of the parents of the children in her care. They knew him well. He had committed some crime when he was 16 years old. Maybe you have to ask to have your records sealed. I don't know how come it came up. But his clearance bounced. That doesn't make sense." (Wyatt)

Response:

Please refer to response to Comment 1).

51) Comment:

"I've been a licensed family child care provider for the last five years. I'm president of Family Child Care Educators Association since 1997. I sit on the board of SCAEYC-Foothill Chapter, Southern California Association for the Education of Young Children.

"And I'll be very brief, but I think this emergency exempt regulations is insane. It just ... they've been exempt, ... so that shows it had nothing to do with children, no one's in danger. I advocate any public policy that protects the children; but these people have already been screened, so they went through the criminal background check. So I oppose this invasion of privacy and the rights of family child care providers and their families. ... it's unfair to family child care providers, when they're waiving their rights with this emergency exempt. They're discriminating against women and children through this.

"And your husband -- we had an article I read in one of the California Association for Family Child Care, where the husband had had some minor incident on his record 40 years ago. You know, so I strongly oppose it; and I hope that we're able to do something about it." (Tinsley)

Response:

Please refer to response to Comment 1).

52) Comment:

"I agree totally with the woman before me (testifier Tinsley), that these people are under exemption, that has nothing to do with children. I think more education needs to be done on, ... the regulations that allow us to provide an exemption. We believe, in this country, that everybody has a right to be rehabilitated, and make a difference in their lives and change their lives; and we don't need to be beating people up over the head for mistakes that probably a lot of people in K-12, community colleges, universities, government has also made.

"So that is the position of CCDAA." (Tucker)

Response:

Please refer to response to Comment 1).

53) Comment:

"I'm ... a licensed family day care in the Watts community. ... people change and communities change. ... And I just wanted to say that I'm opposed to exposing people with criminal histories, because me living there (Watts), going away to college, coming back and being an entrepreneur have changed the lives of some people. Although they have done things in their past, we must give them a chance. ... they have changed their lives. But then, say, they've done something when they were a child that's held against them today, ... why would we hold them accountable for what they've done at a child's age, ... So I'm here to say I'm opposed to it. ... I, myself, have worked with people one on one in the community to change their lives. ... they work so hard to change their lives and then they go to work and make a better living for themselves and then they're shot down because of something they've done 20 years ago? ..."

"So what happened -- the statement ... on applications for employment? Some companies, when you put that on your application I have worked in the corporate world as an administrative assistant. And I know that my boss has sometimes looked at those applications, and where do they go? To the side. You don't even give them the opportunity because you look here and see that maybe, in your mind, they can't be trusted. Well, you can't judge books by the cover. You have to give people a chance." (Nelson)

Response:

Please refer to response to Comment 1).

54) Comment:

"I am here today to provide testimony on behalf of California Child Development Administrators Association. Our association is administrators who service children through California's subsidized child care system. And we had a couple of things that we would like to be included in your consideration of the emergency regulations." (Herzfeld)

Response:

The Department thanks the testifier for their comments, please see Comments 125) and 169) for the testifier's specific comments. Also, please refer to response to Comment 13).

55) Comment:

"I am presenting these comments on behalf of the California Child Care Resource & Referral Network (CCCR&R). We are pleased to have this opportunity to comment on the emergency regulations issued by the State Department of Social Services on August 6, 2002 governing the disclosure of criminal record exemptions in licensed child care centers and licensed family child care homes.

"The CCCR&R is a membership organization representing 61 state and federally funded child care resource & referral agencies. Our members talk to thousands of parents statewide each day who are seeking information on child care. They also work with hundreds of child care providers offering support and technical assistance to assure that the highest quality of child care is available for parents seeking those services. Following careful review of the emergency regulations and extensive contact with our membership, (on the impacts in their communities to these changes – from public hearing testimony) we offer the following comments and recommendations:" (Stromgren)

Response:

The Department thanks the testifier for their comments, please see Comments 56), 170), 171), and 172) for the testifier's specific comments. Also, please refer to response to Comment 13).

56) Comment:

"3. There needs to be a clear and timely process for DSS to notify the administrators of a child care program that a staff member has a criminal record exemption.

"If an individual has obtained a criminal record exemption from a previous employer (child care program) and begins work at a new program, the administrators of the new



program may not be told by DSS that the individual had previously been granted a criminal record exemption.

"Recommendation:

"a. Require that DSS immediately notify the child care program administration that an individual on their staff has been granted a criminal record exemption as soon as the child care program informs DSS that they have hired a new staff member.  
OR

"b. Require DSS to develop a 'passport' system that allows child care employees to move from one program to another that would indicate an approved criminal record clearance or that a criminal record exemption has been granted."  
(Stromgren)

Response:

Licensees are required to notify the local Regional Office when they want to request that a new employee, who has been previously cleared or granted a criminal record exemption by the Department, be associated to their facility. When the licensee contacts the Regional Office, staff informs them whether or not the individual was previously granted an exemption.

When a criminal record exemption transfer request is being reviewed, the Department considers factors such as capacity and job duties in which the individual will be employed and the type of clients served. Some criminal record exemptions are conditional meaning the person's exemption is limited based on their job duties, therefore, a "passport" system would not be appropriate.

57) Comment:

"I'm a child care provider and a foster care parent. I've been for a year. I'm from Yolo County, Woodland. And this criminal history ... I'm dealing with; mine have been over eight to ten years. I have not violated any rules as being a foster care or a child care provider.

"I was told that ... those who ... have criminal backgrounds. They're not issuing out any license or anything. Well, I had an accusation that was made on my license. Someone called in on me. It's been ... over 90 days. I just got a letter from the State. They didn't find anything -- find out that it was true about the accusations. They've been having my license on hold for over five months.

"My foster care has been on hold since February. ... now ... they want me to come in and be refingerprinted. My foster care license is county; my day care license is state. ... they have ... ran my license concurrent. I had been given a waiver. I have letters from parents, stating that whether or not I'm licensed ... they wanted me to keep their kids. ... I've sent them in to the State, ... now they're telling me they want me to be refingerprinted.

"So I'm feeling like that I'm being manipulated under the new law that's come -- that has come as of May 1st, that was passed about the criminal history. And I don't think that's fair because ... I was already licensed. I haven't violated any rules. It took them over 90 days. I feel like my rights have been violated and everything. My life has just been destroyed behind this, and kids are my world. And I would like for something to be done about that or a hearing on that or something, because they already have my fingerprints, already have a waiver, so why would I have to go back and be refingerprinted all over again? And they have ran my license concurrent.

"... it might be other foster care or day care providers out there that's like me, that has a criminal background. We, who have ... a criminal background history, we know you guys are paying close attention to us, so we're going to do what we're supposed to do. We have these providers out there that don't have a criminal history, and they're having nanny cameras, people in their homes, and seeing children being beat and abused. Those are the ones probably that need to be paid attention to.

"... a lot of our rights have been violated, and it should be looked at more carefully than that. Might be a lot of other people in my predicament ... and it could take one person ... just have a phone call in, and your whole life just gone, destroyed.

"You know, kids are my world. I take care of kids. I've worked all my life since I was 13. I'm 35 now. And it was hard for me. I have two boys, 12 and 14. It's been very hard. And there's a lot of parents out there that needed day care. And we have day cares that charge a thousand, 1,500 dollars a month. Here I am, I charge five. I transport kids, I supply diapers, I supply three meals a day, lunch; pick them up, drop them off. The parent didn't have to do nothing but drop the children off to me. And I had a full house. And all of that is gone over one phone call, and I was being manipulated and under my criminal history. I haven't been in any trouble. No violations, no anything. And I don't feel like that's fair. And I would like that to be checked into because it might be other parents and providers that are in the same predicament as I'm in." (Woods)

Response:

The CDSS appreciates the opportunity to address the testifier's concerns and has taken steps to investigate the details of Ms. Woods circumstances to address her concerns.

58) Comment:

"... there is a very strong sentiment amongst our local providers that we trust the procedure that the licensing agency has gone through to grant exemptions. None of the people who they have on their staffs who have exemptions pose any kind of danger to children. In fact, most of them are excellent teachers. For example, one of them has an exemption based on inappropriately cashing a welfare check. This is not a criminal who you're worried about working with children. And yet, when parents hear that this person has a crime in their past, parents get very, very anxious. So we would like to really encourage the licensing agency to go back to your earlier

procedure of certainly check people's records, certainly grant exemptions carefully, but do not require the notification procedure." (Harris)

Response:

Please refer to response to Comment 1).

59) Comment:

"Child care is a tenuous business proposition anywhere. But here, in the region of the highest cost of living in the state, any additional economic burden could mean the difference between success and failure of our child care centers or settings." (Felice)

Response:

Please refer to response to Comment 14).

60) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that: ..."

"Chinese language providers in particular complain that information about the emergency regulations has not been translated into Chinese and they are confused about what they are to do. CCL has stated that they cannot afford the translation." (Felice)

Response:

The CDSS regrets that due to serious fiscal constraints, translation of the emergency regulations and forms is not possible for languages other than Spanish at this time.

61) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that: ..."

"The information created by CCL is complex and dense and hard for some providers to understand." (Felice)

Response:

Licensees may contact their Licensing Program Analyst, the Child Care Advocate assigned to their area or their local licensing Regional Office anytime they have questions regarding a procedural or regulatory requirement. Additionally, licensees may access Community Care Licensing Division's (CCLD) website by logging on to [www.cclld.ca.gov](http://www.cclld.ca.gov). CCLD's website contains all the new licensing requirements as well as all other regulations, policies and procedures. Licensees who do not have internet access at home may utilize their local public library.

62) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that: ..."

"Some CCL analysts are giving wrong information; e.g., that providers must write the names of those with criminal background exemptions on the poster that is posted in their program." (Felice)

Response:

Please refer to response to Comment 61). Additionally, training has been provided for all licensing field staff. Should a provider have any concerns about the information provided by licensing field staff, they may contact the Local Unit Manager at their local Child Care Regional Office.

63) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that: ..."

"Providers complain that the regulations apply only to licensed care; they say why not just give up being licensed and provide license-exempt care where disclosure is not required?" (Felice)

Response:

This comment is outside the scope of the proposed amendments.

64) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that: ..."

"The hearings on this issue are all held during the workday, when providers cannot attend." (Felice)

Response:

The CDSS agrees with the testifier that it is not always possible for providers and other affected individuals to attend public hearings and orally testify. The public hearing process includes a 45-day public comment period during which the Department accepted testimony via the mail, e-mail, or by fax. Written testimony is given as much consideration as oral testimony. The 45-day public comment period was August 30, 2002 through October 17, 2002, at 5:00 p.m. after the close of the final public hearing in Oakland.

65) Comment:

"Mardi Lucich with the California Child Care Health Program. ... our organization and I agree with all the testimony that has been given thus far (Oakland hearing). ... in addition ... one of the fundamental tenets to quality child care that supports the healthy growth and development of young children is the necessity that they be cared for in safe environments that protects them from harm. And there is no disagreement about that.

"However, ... an additional requirement for quality care is an environment that honors, encourages, welcomes and appreciates relationships. We need to recognize that our society, highlighting child care settings, functions effectively as a system of relationships. The places, ... where we develop and value children's learning and experiences involves three subjects: The teachers, providers, the children and the families. And these three subjects are in relationship with each other in an interconnected system.

"This means that what happens to one, happens to others. You cannot have an atmosphere where parents don't feel comfortable; where teachers, providers don't feel comfortable; and, in turn, where children don't feel comfortable. And these regulations are setting that devastating arena. These regulations effectively discard, ignore and ultimately infringe upon the relationship system, a critical component of quality child care. It is all of our responsibility to create and support a culture that reveres the dynamics of these vital relationships; and it is our responsibility as a community to preserve the environments that provide opportunities for the participation in respectful, loving and unrestrained relationships.

"These regulations need to be reevaluated, so that they promote and sustain an atmosphere where all parties feel welcome, respected, and a place where relationships can flourish and not feel threatened. Remember, it is the relationship aspect of child care that has a resounding influence on the worth of children we raise in our society." (Lucich)

Response:

Please refer to responses to Comments 1), 13), and 14).

66) Comment:

"I'm ... with the Child Care Law Center. And I'd like to thank you for holding this hearing. The Child Care Law Center's mission is to make sure that quality child care is available for all the children who need it. And our information and referral line allows us to hear stories of thousands of families and child care providers every year. That's the background for the three comments that we have to the regulations that the Department of Social Services has issued." (Branch)

Response:

The CDSS appreciates the opportunity to address your comments. Please see the testifier's specific comments at Comments 67), 150), 192) through 200), 203), 204), 208), and 209).

67) Comment:

"1. There Is A More Effective, Less Burdensome Alternative

"Before final approval of the regulations, DSS must include in its 'final statement of reasons' submitted to the Office of Administrative Law (OAL) a determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose of the regulation or would be as effective and less burdensome to affected private persons than the regulations. (Cal. Gov't Code Section 11346.9(a)(4) (West 2002)

"DSS contends that the purpose of the emergency regulations is to 'implement and make specific the Department of Social Service's policy that parents should be informed in the most expeditious manner possible whether persons caring for their children in licensed child care have been granted a criminal record exemption.' ('Notice of Proposed Changes in Regulations of the California Department of Social Services (CDSS)' – ORD #0702-18, p.2.) While expeditious delivery of information may be an important policy, DSS' other policy goals would be better served by requiring parents to call the local licensing office for the information, and the process would be more effective and less burdensome to providers. This approach would:

- "- Be more effective because DSS would be certain about what information is released to parents and could ensure a statewide standardized source of information.
- "- Serve the needs of providing parents the information necessary to make careful child care choices.
- "- Protect providers from being forced to disclose the information and possibly undermine a trusting relationship between parent and provider.

- "- Ensure that providers are not at risk of disclosing more information than is allowable under the law, such as the nature of the crime exempted. (Branch)

Response:

Please refer to response to Comment 13).

68) Comment:

"I'm presently a board member on two boards of San Juan Valley Child Care Association and Diablo Vista Child Care Association. And I'm also on the ways and means committee of a state organization in child care.

"... it was brought to our attention that there was a blatant disregard for what was happening under this regulation; information that had already been released to The Register newspaper in Orange County; and also there was a Web site that was put up on child care providers with their criminal records. And -- I mean, instantly released. I mean, there was such an outrage down there, that I'm sure this is one of the reasons why we're having these type of hearings.

"Our feeling on our organizations are this: This is a blatant disregard because DSS is doing a fine job of - when they give a license out to a child care provider, they've already done ... a thorough background screening. And there is no reason for a person who's had a youth-arrested record to be told to parents, from the child care provider, that they have to tell them that they have a criminal record. It seems that if Licensing-DSS is willing to give a child care person a license, that that screening with FBI and criminal-background check, and using their judgment is fine enough. And we do not have to have this type of regulation. This is a total disregard for the correctional system of justice; because if a person has paid their restitution for their crime, whatever it was, then it seems to me like, let it go. How long should a person be persecuted for something that they did years before?

"So it seems that DSS is doing a fine job, and this regulation should be dropped. Not modified or changed. I mean, the changing should be, it should be dropped. They're doing a fine job of what they're doing right now." (Flowers)

Response:

Please refer to response to Comment 1).

69) Comment:

"I'm with Coleman Advocates for Children and Youth. ... I agree with a number of the previous speakers. Specifically, the testimony offered by Melinda Felice and Sujatha Branch from the Child Care Law Center." (Wilson)

Response:

The Department has reviewed the comments offered by Ms. Felice and Ms. Branch and has responded.

70) Comment:

"I think the time and place of these hearings holds an undue burden on public participation by providers, parents and working families." (Wilson)

Response:

Please refer to response to Comment 64).

71) Comment:

"Our organization does not believe that the presence of a shoplifter in a child care center poses a clear and present danger to the welfare of children. I think the environment that's created here, this climate of distrust is antithetical to healthy child development. And I also believe that this entire process calls into question whether or not these regulations are, indeed, an ill-advised solution in search of a non-existent problem." (Wilson)

Response:

Please refer to response to Comment 1).

72) Comment:

"I'm a licensed child care provider from Sonoma County. ... I've been a licensed family child care provider for over 20 years. I do have a criminal exemption for a misdemeanor that is also over 20 years old. My tragedy is that the way this gross invasion of civil rights is overstepping the boundaries of an individual's privacy, and how this affects my family personally. ... not even my ... grown children ... know of this ... I was shocked when the Licensing worker came for a visit routine and confronted me with this misdemeanor criminal-exemption from 20 years past. He ... felt that it was totally uncalled for; and that he, ... didn't understand why State



Licensing was treating us providers in this way. He ... had no choice but to notify me. ... He wholeheartedly agreed that this was taking it much too far.

"...I've been an active community member for this city for 26 years. My own children and hundreds of other children have passed through my doors. I have honestly and carefully cared for not only children, but whole families, by making it possible for parents to go to work or to school. I've cared for special needs people, children and parents, alike. I've been an active participant in all child care issues throughout the county and for the State of California. I have educated myself and kept a healthy, safe environment for my children, for my child care families to thrive in. This is the most degrading thing that has ever happened in my life. My reputation will be in jeopardy by persons who do not understand the whole of the matter. My own children will have to be told. I cannot do that.

"Why would the State of California treat licensed family care providers or child care center persons this way? Don't you think 20 years is taking a misdemeanor too far? After all, I already have a valid exemption. This was given to me by State Licensing 20 years ago, and this was not a felony. This was in no way child related. I have not even had a driving ticket for as long as I can remember. Why are we the only -- why are they only doing this to child care workers? Why are we different from teachers, doctors, lawyers, senior caretakers, disabled care facilities, which many of these others also do, working out of their home? What is the difference between a doctor who treats children or a teacher who is with a child most of the day, or a senior caretaker for cares for people in their home, or a mentally or physically disabled person being cared for in a home? I don't understand.

"I urge you not to let this go any further. My own children take priority when it comes to this kind of injustice. Would you divulge your 20-year-old secrets to your own children, if the state demanded that of you? Let's be fair about the values we put on justice. Please take into consideration the impact this will have on all matters regarding our civil rights. Please take into consideration the impact this will have on the families of hard-working people.

"If we already have a screening process in place ... why aren't we putting it into place - - ... the tools necessary to make this an even better process? A process that works. This would eliminate these hardline, unjust tactics. This seems to be where the problem lies. Isn't this about a few people who fell through the cracks? Why are we crushing the integrity of those of us who believe and are working to promote high quality child care? The State Licensing department is not thinking how this affects the provider's families. ..." (Miranda)

Response:

Please refer to response to Comment 1).

73) Comment:

"I'm a family child care provider. I'm the president of the Sonoma County Child Care Association, the vice-chair of the Sonoma County Child Care Planning Council, and a member of the United Child Care Union. ... It is very hard to find qualified assistants in the field of child care. I finally, after months and months, found this remarkable young woman, only to find out when I did what I was supposed to do -- call Licensing and have her fingerprints associated with my day care home, to find out that they ... lost her fingerprints, and she had a criminal exemption. ... her criminal exemption was for ... domestic violence. She was in an abusive relationship. She defended herself. Her partner had prior problems with domestic violence. He convinced her to go to jail instead of him because she would not do time but he would. Subsequently, she did.

"This was put on her record as a misdemeanor. It got dropped to 'disturbing the peace.' ... This, to me, is a crime against women and children, just in itself, that she would have a record for defending herself and not be able to work in a child care facility, which she absolutely excels at. ... She compared working for me at ten dollars an hour ... to working at Starbucks at 14 dollars an hour, where she doesn't have to disclose anything. We are not putting credence into our field. There's not compensation, recognition, or respect. And to wheedle out people who are qualified for misdemeanors that they did five years ago, ten years ago, that have nothing to do with the quality of care that they provide is lessening the availability of quality care in our county and our state." (Rincon)

Response:

Please refer to response to Comment 1).

74) Comment:

"I appreciate the fact that the state is holding these hearings, because what it is allowing is a full understanding of why it is that these emergency regulations are absolutely not needed.

"My last and final comment is I'm very concerned that the state will be exposing itself to a lawsuit on invasion of privacy. I know that we're interested in looking at that; and I think that's a mistake for the state to make this more complicated than it needs to be." (Monrad)

Response:

This comment is outside the scope of the proposed amendments.

75) Comment:

"... As a resource and referral agency, we are mandated to inform parents when they call in for referrals, that we give no recommendations, and we give them many resources in which they can use to help them make the best choice that they can make. One of those things that we give them is a number that they call Licensing, to find out about the licensing history of a program. We've been informed that when a parent calls now, ever since the emergency regulations have been in place, that they not only give the usual information about the visits that Licensing makes, as well as any complaints that it made against the program that had been substantiated or inconclusive; but now they are giving, on a regular basis, without even having asked, about people who are working in a facility who have a criminal background exemption. We're concerned about ... the impact on the ... field as a whole, that parents ... may very well use this as a screening tool where, in the past, they would still consider programs and go and visit them and use their other resources to determine the quality of the program. ...

"... we're concerned that program directors may then change their hiring policies based on this, if they feel that a person who comes, with a criminal background exemption presents a liability to their program simply based on what people's perceptions may be." (Kriege)

Response:

Please refer to response to Comment 2).

[General - Training]

76) Comment:

"We recommend the local licensing agency be required to provide regional training workshops for licensees upon the adoption of proposed regulations." (Hampe/Howell)

Response:

Please refer to response to Comment 61).

77) Comment:

"Recommendation: ... Train and educate Caregiver Background Check Bureau staff on the actual Penal Code regulations regarding Dismissals, Closed Probation, and Confidentiality." (Picazo)

Response:

This comment is outside the scope of the proposed amendments.

General – Role of State

78) Comment:

"These regulations require licensed child care providers to advise parents of their rights. New is a requirement to notify parents, or the responsible person, of any employee who works with a criminal background exemption. Specifically, a licensee shall provide, upon request, the name and type of association of such person, and shall cause the parent to initial the form to acknowledge the notification.

"The Professional Association for Childhood Development (PACE) supports the delineation and consolidation of parent rights in child care, and the notification of parents of these rights, as proposed in these regulations. However, with regard to providing information on criminal background clearances, we believe this is the role of the State. Putting this burden on employers is harmful and wrong. Parents should be told to contact the appropriate licensing office for that information." (PACE)

Response:

Please refer to response to Comment 13).

79) Comment:

"The State, Not Licensees, Should Be Responsible for Informing Parents - The most important objection to these emergency regulations is the new obligation of licensees to disclose information on employee criminal background clearances, which should be the State's responsibility. Licensees are given approval to hire but are not provided reasons for denial or information on the exempted employee's 'crime.' Since it is the State that administers the exemption process and has exclusive access to the information relied upon to grant an exemption, the State should be the resource for concerned parents who seek additional information.

"Because licensees are not the keepers of the information that the regulations require us to disclose, we rely on the State to provide us with accurate information. This places licensees in an untenable situation when, as occasionally happens, we are not informed or incorrectly informed of an exemption. Undoubtedly, these oversights happen inadvertently through paperwork failures and human error. However, as KinderCare discovered in the process of attempting to comply with the new regulations, many of our employees have 'simplified' exemptions that the State, apparently as a matter of course, never communicated to the center director. A provider typically learns of an exemption because the provider is asked to participate in the request for an exemption. With 'simplified' exemptions, the State does not solicit provider participation; therefore, the information is never communicated. We cannot disclose to parents what we do not know, yet the new regulations require us to do just that. The communication of the information is properly the responsibility of the State that controls the process, not the provider." (Tronick/Eiland)

Response:

Please refer to response to Comment 13) for a response to comments in the first paragraph.

Licenses can contact the Department anytime to determine whether or not any individual in their facility has any type of criminal record exemption. It is the licensee's responsibility to maintain exemption information and keep it updated.

80) Comment:

"The State's duty to clear employees and inform parents - We believe that it is the duty of the State to clear persons with inappropriate criminal backgrounds. Since the State does not disclose to the employer, it must reserve to itself the method of notification to parents without exposing the licensee to liability for wrongful termination or action taken associated with disclosure.

"The State must be careful in adopting policies which impact the availability of child care staff that are committed to, or have successfully performed, child development services. The chilling effect of any new requirements, and their impact on small businesses (80% child care is delivered by small businesses), must be factored." (PACE)

Response:

Please refer to responses to Comments 1) and 13) for comments made in the first paragraph.

Please refer to response to Comment 14) for comments made in the second paragraph.

General – Civil Liberties

81) Comment:

"It is of significant concern to the Council that the CBS Appellate Court Order and resulting regulations violate civil liberties of exempted personnel and risks considerable potential to diminish the availability of services in an industry that is already struggling with recruitment and retention of qualified staff." (Hampe/Howell)

Response:

Please refer to response to Comment 14).

## General - Discrimination

### 82) Comment:

"The regulations for disclosure to the community at large pose three issues:

"1. Discrimination against a group of people in a specific employment field

"Rationale: Fingerprinting of staff, when enforced by CCL, will surface any history of violence or child abuse and employment will not be realized. Any other infraction will allow the exempted employee to work in child care and therefore does not pose the perceived threat that the regulations address." (Picazo)

### Response:

Please refer to response to Comment 1).

## General – Violation of Individuals Rights

### 83) Comment:

"The regulations for disclosure to the community at large pose three issues: ...

"2. Violation of individual rights of persons who have made restitution or cleared their record by continued punishment through disclosure, censure and public digestion of their private business.

"Rational: As long as the child care center is apprised of the criminal record and has an exemption on record, the disclosure serves no purpose than to harass such employees. Further, parents served by state subsidized centers may not have the sophistication to differentiate between disclosure and ongoing criminal activity." (Picazo)

### Response:

Please refer to response to Comment 1).

## General – Inappropriate Leverage

### 84) Comment:

"The regulations for disclosure to the community at large pose three issues: ...

"3. Inappropriate leverage on the part of the 'analysts' at the Caregiver Background Check Bureau.

"Rationale: The anonymous analysts are heavy handed, ignore Penal Code regulations when applicable, deny the employee confidentiality and presume to be an extension of the Department of Corrections rather than a protective measure for children in the State's subsidized care programs." (Picazo)

Response:

The Department respectfully disagrees with the testifier's comments. Furthermore, these comments are outside the scope of the proposed amendments.

General – Potentially Unconstitutional

85) Comment:

"There are a number of fundamental problems with the Emergency Regulations: ...

"Second, the regulations are potentially unconstitutional in that a person must agree to forfeit their constitutional right to privacy as a condition of employment although that person has already submitted to a thorough review, their violations were not of a serious nature nor were they related to their work with children, and for many, they occurred a long time ago with no further incidents." (Martinez, Megan, Kennedy, Johnson, Tinsley, Kwong, and Knox)

Response:

Please refer to response to Comment 1).

General – Undue Hardship

86) Comment:

"There are a number of fundamental problems with the Emergency Regulations: ...

"Third, it's creating an undue hardship and instability in what's already a beleaguered work force." (Martinez, Megan, Kennedy, Johnson, Tinsley, Kwong, and Knox)

Response:

Please refer to response to Comment 14).

87) Comment:

"There are a number of fundamental problems with the Emergency Regulations: ...

"Fourth, issues of constitutionality, discrimination and the effects on the child care industry, the economy, local communities, families and even the safety and well being of the children were entirely disregarded in imposing these regulations.

"Legislation regarding criminal exemptions needs to be established by all stakeholders, most especially child care providers and parents. It must clearly who is and who is not fit to safely and appropriately care for children. It must articulate the problem it's trying to solve and demonstrate the need, rationale and impact of such legislation. It must be universally applied to licensed facilities public facilities, including all public schools and all providers, agencies, entities and persons receiving public funding, including child care subsidies." (Martinez, Megan, Kennedy, Johnson, Tinsley, Kwong, and Knox)

Response:

The comments are outside the scope of the proposed amendments.

88) Comment:

"Other more specific components must include:

"1. Persons who have been appropriately exempted, have worked in the child care field for three years with no subsequent incidents should not be subject to exemptions

"2. Persons who enroll in child development courses or initiate a licensing application should be given complete facts about the exemption process and the disclosure requirements. It needs to clearly state that the person must agree to give up their constitutional right to privacy as a condition of licensure and employment. It also needs to provide that person the opportunity to include a personal statement and any other supporting documentation he or she requests as part of the information made public.

"3. No disclosure is necessary for minor convictions that are unrelated to caring for children and that occurred prior to five years.

"4. Posters are not necessary when parents need to read and sign Parent Rights documents that includes information about the exemption process and disclosure information." (Martinez, Megan, Kennedy, Johnson, Tinsley, Kwong, and Knox)

Response:

1. The comment is outside the scope of the proposed amendments.

2. The Department is currently developing a pamphlet describing the Departments' background check process. The pamphlet also advises applicants and employees that if they are granted a criminal record exemption to work or live in a licensed facility, their name and the name of the facility where they work or live will be given out to the public upon request under the California Public Records Act. The pamphlet will be distributed during licensing orientations as well as when an applicant or employee is electronically fingerprinted using Live Scan.



3. The comment is outside the scope of the proposed amendments.

4. The purpose of this section is to ensure parents and authorized representatives are aware of their right to specified information and that these rights must be posted in a prominently, publicly accessible area in the child care center at all times or family child care home at all times children are in care. These regulations ensure that parents and authorized representatives have immediate access to information about child care staff or anyone living in or associated with a family child care home, to allow them to make informed choices regarding the placement and continued care of their children in licensed child care facilities.

#### General – Regulations Exceed CBS Mandate

89) Comment:

"The Regulations Exceed the Mandate of CBS Broadcasting - Although KinderCare recognizes that CBS Broadcasting Inc. v. California Department of Social Services (91 Cal.App.4th 892, 110 Cal.Rptr.2d 889 (2001)) established the public's right to know about criminal backgrounds, the emergency regulations promulgated by the Department of Social Services far exceed the disclosure mandated by CBS Broadcasting. In that case, the Court of Appeals used a balancing test to weigh privacy interests against the public's right to know under the Public Records Act (Gov. Code § 6250 et seq.), and decided in favor of disclosing criminal background information dating back five years. The court did not address disclosure of information beyond five years, nor did the court place the burden of disclosing the information on private licensees. The emergency regulations have no such time limit, and unnecessarily place the burden of disclosure on the provider." (Tronick/Eiland)

Response:

Please refer to responses to Comments 1) and 13).

#### General – Regulations Violate Privacy of Caregivers [Also, see Comments/Responses for Sections 101218.1(b)(8)/102419(a)(8)]

90) Comment:

"The Regulations Unnecessarily Violate the Privacy Interests of Caregivers, Subjecting Them to Undeserved Humiliation - While not effectively serving the interests of parents nor complying with state law, the emergency regulations are harmful to the privacy interests of employees. Once background checks have been completed and exemptions have been granted against strict guidelines, we believe in protecting the privacy rights of our employees. The right to privacy has been recognized in California for over seventy years. (See *Melvin v. Reid* 112 Cal. App. 285 (1931).) It has long been recognized that the older a criminal conviction, the more the balancing test weighs in favor of privacy interests. (See *Briscoe v. Reader's Digest Association*,

Inc. 4 Cal. 3d 529, 483 P.2d 34, 93 Cal. Rptr. 866 (1971), "Once legal proceedings have been concluded, and particularly once the individual has reverted to the lawful and unexciting life led by the rest of the community, the public's interest in knowing is less compelling.") The emergency regulations, however, fail to take the privacy interest into account by failing to place a limit on disclosure of old convictions.

"Because the privacy interests of employees are harmed and employees are subject to stereotyping and humiliation, licensees face increased difficulty recruiting quality employees. It is difficult to attract qualified staff in the child care field. The work is difficult, and the wages are not high. Qualified people who are attracted to the field, and who remain in it, generally do so because they love children, enjoy working with them, and are good at what they do. These qualified people have been approved by the State through the exemption process to work in child care. Many have had exemptions for years. These exemptions are frequently due to a minor infraction that is a decade or more behind them, and the State does not grant exemptions for serious offenders. The new regulation's compulsion to divulge upon request employees working with an exemption causes embarrassment and humiliation for hard-working caregivers. Some of our qualified staff may decide to leave the child care field instead of divulging that they have a criminal record, causing a decrease in qualified child care providers at our facility. Additionally, other persons may be dissuaded from applying for a position or may withdraw from the process when informed of the disclosure law, though otherwise qualified, because of it." (Tronick/Eiland)

Response:

Please refer to responses to Comments 1) and 14).

91) Comment:

"AFSCME opposes the proposed criminal exemption regulations. The regulations arbitrarily deny licensed child-care workers their fundamental right to privacy and discriminate against a work force comprised primarily of women and minorities. Specifically, the regulations arbitrarily target licensed child care workers. The legislation is only applied to licensed child care workers and doesn't regulate the hundreds of thousands of unlicensed child care workers, school teachers, and child counselors in the state." (Dowell)

Response:

Please refer to response to Comment 1).

92) Comment:

"Regulations violate a worker's fundamental right to privacy. The central component of these regulations require child care workers to waive their right to privacy as a condition of employment, and requires child care employers to release detailed

personal information and records of child care workers to members of the general public." (Dowell)

Response:

Please refer to response to Comment 1). Additionally, no detailed personal information is revealed. The only information that is revealed is whether or not an individual has a criminal record exemption and the facility with which they are associated.

93) Comment:

"Child care workers deserve to be treated fairly and have their legal rights protected. The proposed regulations undermine child care workers by discriminating against licensed child care workers and violating workers' rights. AFSCME and UCCU believe that the key to ensuring parents have access to quality child care is to support licensing regulations and legislation that supports a qualified and dedicated child care work force." (Dowell)

Response:

Please refer to response to Comment 1).

General – Negative Impact

94) Comment:

"I asked several of my Area Managers and Center Directors to tell me how the emergency regulations were affecting their day-to-day operations. The following are a few stories that exemplify the negative impact the regulations have had on individuals:

"Center Director in Southern California

"As a result of my current position and experience in the child care field in California, I am familiar with the difficulty of attracting, hiring, and retaining qualified individuals to work in child care, and also with the impact the new California exemption disclosure law has had and will continue to have, on these goals. At my center, we have a wonderful teacher who has been with us since 1996. She is a stable, dependable individual, and a contributing member of society, who is also married with children of her own. When she was hired we applied for and were granted an exemption by the State of California for a conviction that occurred in 1990, when she was just eighteen years old. At the time of the incident she was married to a man many years her senior, who physically and emotionally abused her. She was estranged from her family and did not know where to turn to for help in getting out of the relationship. Shortly after the incident described below, the employee was able to dissolve her marriage and returned to school, receiving her GED and taking college courses in child development and art curriculum. She began as a volunteer at KinderCare, and has been a teacher

with us ever since, continuing to take child development classes and working towards her AB.

"The incidents relating to the legal charges against her occurred in May of 1992, when my employee was just nineteen years old. She told her husband she wanted a divorce, which led to an argument where he tried to push her down the stairs. Some neighbors who witnessed the incident called the police. Her husband was arrested and charged with domestic violence. His brother paid his bail and without notification to her, he was released the same night but did not return home. She never received notice of the hearing date, so the charges against him were dropped.

"Her husband then returned home and set her up to get back at her for pressing charges against him. He began arguing with her and accused her of having an affair. Then he grabbed her and, in self-defense, she reached up and grabbed his neck, scratching him because her nails were long. Immediately afterwards, he phoned the police and had her arrested on domestic violence charges. She had no one to bail her out and so spent four days in jail awaiting the hearing. She was convicted of domestic violence.

"She later appealed the charge, and the judge ordered that her conviction be set aside and the charges dismissed. He also issued a ruling releasing her from all penalties and disabilities relating to the offense. However, the order did not relieve her of the obligation to disclose the conviction when responding to any questions or applications for licensure by any agency. When she was hired by KinderCare she disclosed the conviction, brought in the documents relating to the matters, applied for, and was granted an exemption. This employee does not deserve to be labeled a 'criminal' and subjected to public scrutiny for a very personal, painful incident years after the fact." (Tronick/Eiland)

Response:

Please refer to responses to Comments 1) and 14).

95) Comment:

"I asked several of my Area Managers and Center Directors to tell me how the emergency regulations were affecting their day-to-day operations. The following are a few stories that exemplify the negative impact the regulations have had on individuals: ...

"Area Manager #1

"I am involved with the hiring and firing of many staff members and for the overall operations of the centers in my region. I have one employee in my region that has a simplified exemption. The simplified exemption process is reserved for the review of non-violent misdemeanors. Often such exemptions are granted after only a review of the applicant's record by the state, and do not involve the individual or employer at all.

These exemptions, when granted, do not indicate what the nature of the misdemeanor is.

"In this employee's case, the only reason I even know what the underlying misdemeanor was for is because my employee voluntarily divulged the information to me. The misdemeanor occurred twenty-five years ago and was for welfare fraud related to cashing a \$100 welfare check when the employee was only a teenager with children, because she did not know that she was no longer eligible for the benefits she'd been receiving. This employee has been with KinderCare for more than ten years and has a great record with us. She is very embarrassed by the prospect of having a parent find out that she is working under an exemption, and what the exemption was granted for. She thought that that chapter of her life was closed and is concerned that her solid record of employment and community involvement for the past two decades are meaningless to her ability to care for children as far as the State of California is concerned.

"This same employee is presently in the process of adopting two children that belonged to her sister. She had hoped to quit working at KinderCare for a period of time to be with them on a full-time basis, and then return to employment at a KinderCare site after they become adjusted. However, because KinderCare has adopted a 'no exemption' policy in response to the new California disclosure law, she is unable to do so because she has to work under a simplified exemption. Instead, my employee is taking FMLA leave to adopt the children, though this will not allow her to bond with them for as long a period of time as if she left work and returned when they were adjusted." (Tronick/Eiland)

Response:

These comments are outside the scope of the proposed amendments.

96) Comment:

"I asked several of my Area Managers and Center Directors to tell me how the emergency regulations were affecting their day-to-day operations. The following are a few stories that exemplify the negative impact the regulations have had on individuals:  
...

"Area Manager #2

"I have three employees with simplified exemptions in my region. When we have an employee working under a simplified exemption, we are not made aware of the misdemeanor the exemption was granted for. However, each of these employees has disclosed that their convictions are for welfare fraud. The most recent of these convictions was six years ago, and the least recent was more than thirteen years ago.

"The employee with the least recent conviction has been at KinderCare for thirteen years and has provided exceptional service to the center. She has moved from being a

well-liked and qualified teacher to being our bookkeeper for the center. Despite her conviction for welfare fraud as a young girl, she is a trustworthy and competent employee who we would hate to lose. This employee is very private and is ashamed of this old misdemeanor. She has indicated that she will quit immediately if a parent begins to inquire into whether she is working under a simplified exemption, and what the underlying conviction was for. It is so humiliating for her to have to publicly divulge the conviction that she would rather cease employment with us than to do so.

"Another employee who has been working for us for four months and who did not have an exemption on her record when hired, was recently pulled over on a moving violations charge and subsequently arrested on an outstanding warrant. The warrant was for an incident ten years ago for welfare fraud relating to cashing a \$140 welfare check she was no longer entitled to. If the employee is convicted, we will have to let her go under KinderCare's no exemption policy, created in response to the California law.

"I have been frustrated in the hiring process by the 'no exemption' policy in reaction to the California disclosure law. I have interviewed three fully qualified applicants that I was unable to extend offers of employment to because we would have needed to request an exemption for them. It is hard enough to find qualified applicants in the child care field without having to worry about the new disclosure law and its impact on hiring and retaining employees.

"Presently, I have been interviewing a fifty-year-old applicant who, after the third interview, divulged to me that she had been working in the field under a simplified exemption. The exemption was for a misdemeanor committed when she was eighteen years old. She told me that for years she has been trying to get it expunged from her record and that she has always been puzzled about why she even needed a simplified exemption for it. She did not tell me what the misdemeanor was for, only that it was very minor and that she was embarrassed to even have a record for something committed thirty-two years earlier. Unfortunately, we cannot hire this employee because of the 'no exemption' policy necessitated by the emergency regulations." (Tronick/Eiland)

Response:

Please refer to response to Comment 21).

97) Comment:

"I asked several of my Area Managers and Center Directors to tell me how the emergency regulations were affecting their day-to-day operations. The following are a few stories that exemplify the negative impact the regulations have had on individuals: ...

"Mulberry Regional Director of Operations

"I had an applicant who divulged that she had committed a petty crime while a juvenile, but was working at a child care center when interviewed. Under that center's records from the state, she had been cleared and was not listed as having an exemption. Unfortunately, we were not allowed to roll over her clearance from that center to a clearance at our own center. A former state policy allowed a child care provider moving from one center to another to simply request a rollover of her record. Now, however, licensing requirements mandate that persons be fingerprinted each time they change to a new center. Because she was a strong candidate and I had no reason to believe I would need to request an exemption for her (which is contrary to current Mulberry policy), she was fingerprinted again and her prints were sent to the state. I was very surprised when the results came back from the state with a letter stating that she needed an exemption, and that the exemption was now required for the same offense that she previously had not needed an exemption for. The crime that she had committed was welfare fraud when she was a teenager with a young child. She had failed to disclose a portion of her income so that she was still eligible for state benefits. This woman has been a child care provider for eight years. I had to tell her that I could not hire her because of Mulberry's no exemption policy and that, even if could hire her, I would have to divulge that she was working under an exemption if a parent asked. This applicant stated that divulging to a parent was totally unacceptable. She had paid all of the fines related to the fraud and had no intention of having her past history resurrected as it was completely irrelevant to her ability to care for children. As a result of her feelings about having to divulge to parents, I have since discovered that she has chosen to work in a private setting. This applicant now works at a private kindergarten in California that does not need to comply with fingerprinting and exemption policies. I was very disappointed that she could not work for us under our current policy, and that she would not have wanted to work for us if it meant divulging her past to parents." (Tronick/Eiland)

Response:

Please refer to response to Comment 21).

## General – Staffing Issues

### 98) Comment:

"Recommendation: ... Develop some system to educate State on critical issue of staffing in Child care due to low pay, population served, etc. We hire out of community and will not be able to discriminate against someone who made a mistake in her/his past. Why can you?" (Picazo)

### Response:

This comment is outside the scope of the proposed amendments.

### 99) Comment:

"It is already difficult to find qualified teaching staff. Typically it takes FCS 2-4 months to fill a teaching staff vacancy. We want to keep the teaching staff we have and continue to be able to find qualified staff who want to work in this field. It is simple. When we don't have staff, we can't serve children and families. When we can't serve children and families, we can't get funding. Without funding we cannot continue to function in the communities we serve. FCS believes it is vital that Community Care Licensing Division of DSS, not childcare providers, be responsible for disclosing criminal background information to parents upon request" (Jerene)

### Response:

Please refer to response to Comment 13).

### 100) Comment:

"... I represent the City of Alameda. I'm also here on behalf of the Child Care Work Group, which is a City of Alameda advisory committee, composed of providers, non-profits, parents and other interested community members who wish to increase the quantity and quality of child care in the City of Alameda.

"... our providers are very concerned about the child care shortage in the City of Alameda. We have many children that we are not able to serve because we do not have adequate staff. These regulations simply pose an additional obstacle to getting people into a field that is already low-paid and ... a lot of work. We are very, very concerned about what this does to our ability to serve the children in the City of Alameda." (Harris)

### Response:

Please refer to response to Comment 14).

### 101) Comment:



"The supply of licensed child care is inadequate to meet the demand for care in many parts of the state and turnover in the field is extremely high. It is critical that we work to increase the supply of licensed, regulated child care in California and that we not pass regulations that discourage newcomers to the field, or result in existing providers closing their businesses." (Felice)

Response:

Please refer to response to Comment 14).

General – Employer Liability

102) Comment:

"We are concerned about employer liability raised by the new directive. We are put in the untenable position of telling parents that we have an exempt employee but we cannot tell them the nature of the crime. Parents will often imagine the crime to be worse than it was. Compounding this, some employees may quit or be terminated even though they are good workers, potentially leading to wrongful termination actions against us. The regulation provides no protections for licensees against such disclosure or termination without cause." (PACE)

Response:

Please refer to response to Comment 1).

General – Impact on Employees/Employers

103) Comment:

"Additionally, the regulation puts individuals that have already been cleared and deemed fit to work in child care facilities at risk by notification. Since detail on the past crime is not available to provider or parent, the notification will frighten and instill a lack of confidence in parents. Many parents may, as a result, remove their children from child care centers. In an already tight market, this will lead to more problems in retaining and recruitment of eligible employees, leading to not only the inability of individual centers to operate, but to the possible destabilization of the whole licensed child care sector.

"A cursory survey of PACE members just after the Department's Directive was released last spring found:

"Six centers said they will no longer hire anyone who requires an exemption

"Providers are very concerned about the legal ramifications. They are fearful of breach of confidentiality suits brought by employees that would cost them thousands of dollars, regardless of the outcome.

"One parent asked that his child not be cared for by the exempted employee.

"Three parents disenrolled from the center program.

"Three employees resigned -not just quit their jobs, but quit their careers that they have committed years of education and work. This included one teacher who was currently taking a leave of absence to complete her MA in early childhood education.

"We submit that many more employers/licensees, employees with exemptions, and parents have taken similar drastic action since the effective date of the Emergency Regulations. The Department's Directive of March 22nd and the Emergency Regulations have caused unnecessary chaos for licensed providers, teachers with exemptions, and for the families they serve." (PACE)

Response:

Please refer to responses to Comments 1), 2), and 14).

General – Immunity

104) Comment:

"Regulations should Include Immunity Provisions for Licensees - At a minimum, the regulations should provide licensees with immunity from liability for litigation by employees and applicants. As currently written, the new regulations subject providers to several potential causes of action, including invasion of privacy and intentional infliction of emotional distress. The increased liability risks of licensees are further complicated when misinformation is provided to licensees by the State, as described above, which expands the liability risks to include defamation, libel, and slander. Increased liability to licensees inevitably results in increased costs that will, in turn, increase the cost of child care available to California families." (Tronick/Eiland)

Response:

Please refer to response to Comment 1).

General – Disclosure of Caregivers Record

105) Comment:

"Required Disclosure of a Caregiver's Record Does Not Benefit Parents or Improve Care - The additional burden placed by the new regulations on licensees results in little, if any, benefit to parents. KinderCare and Mulberry believe parents have a right

to know their children are safe and that employees at licensed centers have passed criminal background checks prior to employment subject to the approval of the exemption by the Department of Social Services. The new requirement purports to inform parents so that they can make more informed choices about their child care provider. In reality, providing parents with the knowledge that a caregiver has an undisclosed criminal background, without more, serves only to alarm them without providing enough information for parents to assess the quality or safety of their child care provider." (Tronick/Eiland)

Response:

Please refer to response to Comment 1).

#### General – Disclosure Discourages Licenses

##### 106) Comment:

"Required Disclosure Discourages Licensees from Hiring Qualified Applicants - The practical impact of licensees providing parents with alarming half-information is to discourage licensees from participating in the State's exemption process. KinderCare and Mulberry executives reviewed the process of requesting an exemption of a criminal conviction record that bars employment in a child care center. Because of the political nature of this debate, the anxiety of parents, and the increased risk of liability, we have decided to no longer participate in requests for exemptions for new employees or applicants, regardless of whether the applicant's criminal background is so minor and so old that it is immaterial to the applicant's suitability for working with children. Additionally, we will not retain existing employees who must seek a waiver to allow the employee to work at KinderCare or Mulberry after receiving notification from the State that the new employee requires an exemption to work in child care because of the employee's criminal record. Similarly, an existing employee (even one who has been with KinderCare or Mulberry for years) must be terminated if convicted of a new crime that requires a waiver.

"This has resulted in additional barriers to recruiting, hiring, and retaining qualified staff when demand for quality child care remains high. Parental choice will be diminished, and more California families will join waiting lists until new employees can be recruited, hired, and checked." (Tronick/Eiland)

Response:

Please refer to response to Comment 14).

## General – Criminal Background Exemption Disclosure

### 107) Comment:

"Parents have a right to know that their children are safe and that persons caring for them do not present a danger to them." (PACE)

#### Response:

The CDSS agrees with the testifier's comments.

### 108) Comment:

"The State has developed a procedure for clearing persons with minor criminal histories for employment. In this system, the State reviews backgrounds and allows or disallows employment. Licensees are given approval to hire but are not provided either reasons for denial nor information on the 'approved' employee's rap sheet." (PACE)

#### Response:

Under current law the only information that is public is whether or not an individual has a criminal record exemption and the facility with which they are associated. The Department is not authorized to provide any information on an employee's rap sheet to a licensee.

### 109) Comment:

"Licensees must, and do, rely on the State's clearance relative to the backgrounds of these employees. If there are problems with the clearance system, it is the State's responsibility to solve them. PACE supports any effort to improve, or tighten, these procedures." (PACE)

#### Response:

This comment is outside the scope of the proposed amendments.

### 110) Comment:

"Licensees -- just like parents who place their children -- rely on the State's clearance of these employees. They, too, are concerned about the safety of their own children, their other staff and their personal safety (90% of child care facility owners and staff are women)." (PACE)

#### Response:

The Department appreciates the testifier's comments.

111) Comment:

"In the CBS lawsuit, the court required the Department to release the names and facilities, upon request. It does not require release of approvals earlier than 1994. It does not require licensees to so disclose." (PACE)

Response:

Please refer to responses to Comments 1) and 13).

112) Comment:

"PACE is opposed to the Department's shifting disclosure duties, and liability, to licensees. The deleterious impact on good employees - with minor records and excellent job performance - and on child care centers with excellent programs can be significant. This, in a low-salary industry and at a time when it is difficult to hire and retain good employees. The chilling effect of these regulations must be understood." (PACE)

Response:

Please refer to response to Comment 13).

113) Comment:

"Finally, we believe that the Department has exceeded its statutory authority in promulgating these regulations." (PACE)

Response:

The Department respectfully disagrees with the comment. Health and Safety Code Section 1596.81(a) provides the authority for the Department to adopt, amend, or repeal in accordance with Chapter 3.5 (commencing with Section 11340) of part one of Division 3 of Title 2 of the Government Code any rules and regulations which may be necessary to carry out the Child Day Care Act. Additionally, please refer to response to Comment 13).

114) Comment:

"This is an issue with well-established rights in conflict: the parents' right to know about the conditions under which they will leave their children and the employee's right to protection against unwarranted, discriminatory disclosure. PACE is opposed to any law, regulation, or policy which puts the licensee in the middle of this conflict, especially absent clear statutory directive and State protection against liability." (PACE)

Response:

Please refer to responses to Comments 1) and 13).

#### General – Limitation to Child Care

##### 115) Comment:

"Finally, these new requirements are directed to only a small part of the licensed care population (e.g., child care), and apparently does not cover other areas where children are exposed to exempted employees, such as foster care and licensed-exempt care. We question the authority and consistency of regulations which control one group of community care licensees serving children while not applying these same regulations to other licensees serving children." (PACE)

##### Response:

The Department has no jurisdiction over license exempt settings. Current law prohibits the Department from disclosing specific foster family home information.

#### General – Trustline Exempt

##### 116) Comment:

"We urge regulations related to Trustlined exempt providers be aligned and consistent with that of licensed family child homes and centers." (Hampe/Howell)

##### Response:

This comment is outside the scope of the proposed amendments.

#### General - Rationale for Implementation

##### 117) Comment:

"There are a number of fundamental problems with the Emergency Regulations:

"First, the rationale for the implementation of the regulations was never articulated. There was a rigorous exemption process in place. Persons with serious violations are not granted exemptions. Further, not one case of a child being harmed by a person with an exemption was cited as rationale for the regulations, nor was a connection ever established between the safety and well being of children and lack of disclosure." (Martinez, Megan, Kennedy, Johnson, Tinsley, Kwong, and Knox)

Response:

Please refer to response to Comment 1).

General – Emergency Regulations Improperly Promulgated

118) Comment:

"The Emergency Regulations Were Improperly Promulgated - Finally, the emergency regulations are invalid because they were promulgated improperly. The Department of Social Services has not demonstrated 'an immediate need for a regulation to protect the public peace, health and safety, or general welfare' as required to enact an emergency regulation under the California Administrative Procedures Act. By improperly designating the regulations as 'emergency,' the Department side-stepped the normal administrative rules process that is designed to incorporate democratic principles by inviting public comment and to avoid unnecessarily hasty, ill-advised rule-making.

"The new regulations were adopted without public discussion of their impact on workers, licensees, families, or the availability of quality child care. Furthermore, these new requirements are directed to the licensed child care sector and apparently do not cover other areas where children are exposed to exempted employees, such as foster care and licensed-exempt care.

"However, the public testimony taken this week may motivate the Department to consider the serious implications of increased licensee liability and a decreasing eligible employee population at a time when California parents are demanding more center-based quality early childhood education and child care programs. KinderCare urges the Department to reconsider the emergency regulations.

"Since these emergency regulations were published in August 2002, KinderCare Learning Centers and its subsidiary, Mulberry Child Care Centers, have been in compliance with the regulations. However, we appreciate the opportunity to comment on the impact these regulations are having on the hiring of qualified staff. When the *Orange County Register* expose on child care was first published and the State responded, licensed providers were promised the opportunity to review and comment on draft regulations. Normally, the rulemaking process in California allows a forty-five-day public comment period. However, the emergency regulations became effective without our input. These October public hearings are the first real chance we have had to submit comments to the Department." (Tronick/Eiland)

Response:

The proposed amendments (emergency regulations) were implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1. Approval for the implementation of the proposed amendments was achieved pursuant

to the Government Code Section cited above. These emergency regulations make specific the requirements that child care providers immediately notify parents if any licensee, staff persons, or other adults associated with child care facilities, including adults living in family child care homes, have been granted a criminal record exemption and the nature of his/her job responsibility at the home or center.

The nonemergency rulemaking process set forth in the Administrative Procedure Act is sufficiently lengthy that is not possible to implement regulation changes on an immediate basis. Therefore, in order to protect the health and safety of children in child care facilities, the regulations were adopted on an emergency basis.

When a state agency makes and establishes a finding of emergency the regulations are effective immediately. The 45-day comment period begins the day the Office of Administrative Law publishes the Public Hearing Notice. The hearing notice for the proposed amendments was published August 30, 2002 and the 45-day comment period began on this date. The public comment period ended October 17, 2002 at 5:00 p.m. after the close of the last public hearing, in Oakland. Two other public hearings were held to receive public testimony on the proposed amendments: Monterey Park on October 15, 2002 and October 16, 2002 in Sacramento.

The CDSS appreciates the opportunity to respond to KinderCare Learning Centers and its subsidiary, Mulberry Child Care Centers' comments.

#### General – Support of PACE Testimony

##### 119) Comment:

"KinderCare Learning Centers is also a member of the Professional Association of Childhood Education of California (PACE) and supports the written comments submitted to the Department of Social Services as part of the October 2002 public hearings process." (Tronick/Eiland)

##### Response:

The CDSS appreciates the opportunity to respond to comments provided by the Professional Association of Childhood Education of California.

#### General – Oppose Emergency Regulations/Regulations Lack Emergency

##### 120) Comment:

"I'm ... a family child care advocate, and speaking on behalf of the California Federation of Family Day Care Associations, a statewide organization that represents licensed family child care providers in California. ... we support the position of the Child Care Law Center; that this, in fact, is not an emergency. And no child has been harmed; and we don't see the basis of the emergency regulations. And this is a response, in general, to a media frenzy that has been conducted -- a witch hunt that has



been conducted on family child care providers, that actually serves no purpose. In fact, it harms children and parents. It will prevent them from finding the care they desperately need." (Foley)

Response:

Please refer to response to Comment 118).

121) Comment:

"... this emergency legislation is not fair, it's punitive, and it needs to be dealt with a softer hand. And whoever is ostracized from the child care business should only be those people who have demonstrated abuse toward children, not other crimes." (Lewis)

Response:

Please refer to response to Comment 1).

122) Comment:

"... I represent my Chinese Family Day Care Association. I feel like this kind of emergency is not really an emergency. And I support the Child Care Law Center, too, because if people have, like, a minor mistake they have done against -- a long time ago, it shouldn't be carried on to this date.

"... So I felt ... they can think twice and ... not think this is emergency, ..." (Tseng)

Response:

Please refer to response to Comment 118).

123) Comment:

"I've worked for over 20 years as a family child care provider, center teacher and director, early childhood educator, and advocate for person, families and child care workers. I'm currently co-president of the United Child Care Union, which is affiliated with the with the National Union of Hospital and Health Care Employees and AFSCME. UCCU and AFSCME represent tens of thousands of child care workers across the country.

"Research shows that the quality of early care and education that children and families receive is directly related to the quality of jobs in the industry. We are organizing child care workers in California and across the country to improve the jobs of one of the lowest paid and growing work forces in our country. We're working with our members to ensure is that all families have access to quality affordable child care, and

all children are cared for by dedicated, skilled caregivers in nurturing, supportive environments.

"As advocates for quality child care and child care workers, UCCU and AFSCME strongly oppose the new criminal exemption regulations." (Dowell)

Response:

Please refer to response to Comment 1).

124) Comment:

"... I want to challenge DSS's assertion that an emergency exists that needs to be regulated. I think that the process for issuing these -- proposing and approving these emergency regulations remains unclear and, frankly, antithetical to public participation." (Wilson)

Response:

Please refer to response to Comment 118).

#### General – Previous Regulations/Systems Worked

125) Comment:

"... our membership -- we have confidence in the way that the system grants the exemptions now and feel that it does make sure that children are going to be in safe settings." (Herzfeld)

Response:

Please refer to responses to Comments 1) and 13).

126) Comment:

"AFSCME and UCCU strongly advocates for policies that are aimed at protecting children. The existing DSS requirements already require all workers to undergo a rigorous background screening process designed to protect children and respect the rights of child care workers. The screening process requires that: One, all applicants for child care jobs undergo a criminal background check prior to being hired; and, two, all workers found with a violation more serious than a traffic citation on their record must undergo a stringent criminal-exemption process before being hired." (Dowell)

Response:

Please refer to responses to Comments 1) and 13). Furthermore, current law only requires that an individual shall submit fingerprints before their initial presence.

127) Comment:

Testifier believes burden of disclosure of information should remain with CDSS. Further, testifier states "... I believe that the burden of proof rests with DSS to prove to the public that it's current -- its existing processes are sufficient to protect the welfare of children." (Wilson)

Response:

Please refer to response to Comment 13).

128) Comment:

"... 'felony conviction' may sound horrible, but it is not necessarily so. When all the details of a particular case are studied objectively, a person's past felony conviction may pose no threat whatsoever to a child. I believe it is best to allow CBCB, the Criminal Background Check Bureau, to make the determination on a case-by-case basis, and not categorically eliminate all felony convictions from consideration for an exemption." (Woodward)

Response:

Please refer to response to Comment 13). The Health and Safety Code and the regulations do not eliminate all individuals with felony convictions from consideration for an exemption.

129) Comment:

"I'm the policy director for AFSCME, the American Federation of State, County and Municipal Employees. One of our affiliates is the United Child Care Union. And they have already spoken, but I wanted to speak from a slightly different angle as the parent union for not only UCCU, but also the United Domestic Workers. And our union represents thousands and thousands of county welfare workers, DSS workers at counties throughout the state, HeadStart workers in the Central Valley and a lot of after-school programs run by the City of L.A., et cetera. So we have a very diverse membership.

"And what I wanted to talk about is, AFSCME is very proud of itself as being, in many ways, a government union. And Lord knows, we need to celebrate when government works. And this is a situation where we're trying to fix something that's not broken. So far, there is an emergency regulation for no emergency that we can see. And, in

fact, what we should be trumpeting is how much the licensing and the exemption process has worked." (Monrad)

Response:

Please refer to response to Comment 118).

130) Comment:

"I'm with Bananas Child Care Resource and Referral Agency from Northern Alameda County. I just wanted to support what folk have already been saying, that we do believe that the process that was already in place with the Department of Social Services for criminal background checks was working just fine, so we do not see the need for any changes in those regulations." (Kriege)

Response:

Please refer to responses to Comments 1) and 13).

General – Business/Community Impact

131) Comment:

"In light of this new legislation that -- emergency legislation that has been implemented, it has created a certain level of hysteria in the community, as it relates to child care providers, in that the rulings that determine whether or not a person is fit to provide services for children are so ambiguous and is left up to the eyes of the beholder to enforce, that it is literally putting hard-working women -- because the industry is mostly occupied and facilitated by women -- out of business." (Lewis)

Response:

Please refer to responses to Comments 1) and 14).

132) Comment:

"There is a couple of ladies who have went to Compton Community College. They have gotten their A.A. or A.S. degrees in child development. ... They've achieved their license for 14 children. After three hard years ... they have finally got their houses full... They have now developed the means to pay for their homes ... pay for the vans ... purchased to transport the kids. And because their husband had an offense 33 years ago that was non-child-related, licensing calls them up and say, 'Hey, your husband has got to go, or your business has got to go.'

"... this is an injustice to the child care industry of women who are ... trying to take care of children whose families cannot take care of their children. ... You're not paying them what they're worth. You're not giving them the support that they need.

And now ... you're telling them they've got to get rid of their husbands or get rid of their businesses; therefore, lose their homes, lose their transportation and lose everything that they have educated themselves for, because their husband had some kind of robbery that has nothing to do with children when he was 19 years old, 33 years ago. This is what is happening. And no one is coming to their aid." (Lewis)

Response:

This comment is outside the scope of the proposed amendments.

133) Comment:

"... this legislation has turned into a witch hunt, and it is not fair, and it is devastating the lives of many women. ... these women who went through school to get their education and build their businesses are going to be profoundly affected." (Lewis)

Response:

This comment is outside the scope of the proposed amendments.

134) Comment:

"My fiancée, she was told that her license was going to be revoked, if she didn't apply for an appeal within 15 days; and that I had to be out of the premises. So I'm moving.

"She got her A.S. degree. She's got her child care license. She's on her way. A lot had to do with my support, helping her interpret what she needed to do, to get where she needed to get. And now she's out, just like that, because of something I did when I was 19." (Lewis)

Response:

Please refer to response to Comment 1).

135) Comment:

"... makes it really hard for a family day care provider to do the business, because you have to release so many things. ... hard on all the family day care providers." (Tseng)

Response:

Please refer to response to Comment 13).

## General - Inequities

### 136) Comment:

"I believe that because of the initial motivation for these emergency regulations, the process itself needs to be called into question. And I also hope that -- the child care community -- which, again, as Denise Dowell has stated -- is primarily minorities and women. This process also calls into question the intrinsic inequities that exist in our criminal justice system, where it's largely poor people who don't have the wherewithal for adequate legal representation, so that these minor offenses show up on their record, in the first place." (Wilson)

### Response:

This comment is outside the scope of the proposed amendments.

### 137) Comment:

"... regarding anyone with a felony conviction being automatically excluded from obtaining an exemption, which I understand is now the policy; this is really slanted against the poor, youth and minorities, who are less likely than others to receive adequate counsel. Innocent people are often convinced to accept a plea bargain without fully understanding the consequences." (Woodward)

### Response:

Please refer to response to Comment 128).

### 138) Comment:

"The regulations discriminate against women and minorities. The majority of the licensed child care work force is comprised of women and minorities. As a result, these groups will bear the brunt of the regulations." (Dowell)

### Response:

Please refer to response to Comment 1).

## General – Compromise Trust Relationship

### 139) Comment:

"The regulations also seriously compromise the trust relationship between parents and caregivers that is so necessary to healthy child development." (Dowell)

Response:

Please refer to responses to Comments 1) and 13).

Parents

140) Comment:

"... double standard that's been placed on the family child care community and on the child care community, and that is that parents would have criminal backgrounds ... we are not even notified of any of the issues, due to privacy concerns, we've been told; so we actually don't know if we're dealing with felons, or what kind of background the parents have.

"... they've suggested that parents be included. We like to include parents in activities. ... there's been a suggestion that they could ... assist us with -- and in the private sector, they do come in and assist with birthday parties, events to parks or outings and so forth.

"... providers are not going to want to include parents. If they're being falsely accused based on media frenzies, they're going to be fearful of having anyone in the home, around the children, whether it's any kind of a visitor -- a food program visitor -- anyone that's coming to the door is going to be immediately suspect ..." (Foley)

Response:

California Health and Safety Code, the law upon which the family child care home and child care center licensing regulations are based, Section 1596.871(b) provides in part that a volunteer providing time-limited specialized services, shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the facility, and the volunteer is not left alone with children.

Relatives

141) Comment:

"... the family impact is huge. ... any relative visiting the home -- I mean, ... you couldn't live under a circumstance where everyone that was connected to your family, coming to your home, had to be literally, you know, prevented from coming in. ... they don't, in most instances, have ... any direct contact with children. They're not going into the areas where the children are cared for, and they're visiting on a very temporary basis. But that's going to be severely restricted. And you can't live in a situation like this." (Foley)

Response:

California Health and Safety Code, the law upon which the family child care home and child care center licensing regulations are based, Section 1596.871(b) provides in part that relatives who are not living in the home do not have to have a criminal record clearance or exemption as long as they are not providing care and supervision to the children.

Section 101218.1

142) Comment:

"KinderCare Learning Centers, Inc. is the leading provider of early childhood education and child care to children between the ages of six weeks and twelve years in the United States. KinderCare and its subsidiaries operate a total of 1,261 early childhood education and care centers, with 138 centers in the State of California. We currently serve more than 14,000 California children and their families with quality early childhood programs throughout the State. As leaders in early childhood education and child care, the very core of our organization concerns providing safe learning environments for children. As a result, we are significantly interested in the regulatory changes promulgated by the California Department of Social Services regarding child care provider notification regulations (ORD No. 0702-18).

"I am writing on behalf of KinderCare (and its subsidiary Mulberry Child Care Centers) to submit comments on the recent emergency regulations amending Title 22, Division 12, Chapter 1, § 101218.1 et seq. I submit that the requirement for licensees to disclose information on employee criminal background clearances is objectionable for many reasons." (Tronick/Eiland)

Response:

Please refer to responses to Comments 1) and 13).

Sections 101218.1(b)/102419(a)

143) Comment:

"Second, protecting parents and authorized representatives from discrimination and retaliation for exercising any of their rights is extremely important. We believe that the current protection from discrimination and retaliation, currently applicable only to the exercise of the right to inspect a child care facility or lodge a complaint with the Department about a child care facility, should extend to all of the rights now listed in section 101218.1(b) and 102419(a). For example, family child care homes and child care centers should be prohibited from discriminating or retaliating against a parent or authorized representative based on his/her exercise of the right to be informed of the name and type of association to the facility for any adult who has been granted a criminal record exemption. If DSS believes that it currently lacks statutory authority



to expand this protection against discrimination and retaliation, CAI is willing to assist DSS in trying to obtain the necessary legislative changes that would provide DSS with that authority." (Fellmeth/Back)

Response:

The Department agrees, in general, with the testifier's recommendation. However, due to the time constraints of the emergency regulations process and the Department's need to further research this proposed amendment, this issue will be addressed in a future Child Care Program "clean up" regulations package.

Sections 101218.1(b)/102419(a)

144) Comment:

"Parents can call the Licensing Office for the exemption information, and have the right to receive information from CCL about any complaints or licensing violations in the provider's record. Having Community Care Licensing maintain the burden of disclosure would be a more effective and appropriate approach because it would:

- "- Clearly regulate what information will and will not be released, assuring standardization and decreasing the likelihood of too much, or inaccurate, information being released." (Felice)

Response:

Please refer to responses to Comments 13) and 19), paragraph one.

145) Comment:

"Parents can call the Licensing Office for the exemption information, and have the right to receive information from CCL about any complaints or licensing violations in the provider's record. Having Community Care Licensing maintain the burden of disclosure would be a more effective and appropriate approach because it would: ...

- "- Serve the needs of parents seeking information to make careful child care choices, and would do so in the same manner as parents' seeking other licensing information, such as complaints." (Felice)

Response:

Please refer to responses to Comments 13) and 19), paragraph one.

146) Comment:

"Parents can call the Licensing Office for the exemption information, and have the right to receive information from CCL about any complaints or licensing violations in the provider's record. Having Community Care Licensing maintain the burden of disclosure would be a more effective and appropriate approach because it would: ...

"- Protect providers from having to undermine their own carefully fostered relations with parents, and protect providers from inadvertently, or from being pressured to, disclose protected information, such as the nature of the crime." (Felice)

Response:

Please refer to responses to Comments 1) and 13).

147) Comment:

"Parents can call the Licensing Office for the exemption information, and have the right to receive information from CCL about any complaints or licensing violations in the provider's record. Having Community Care Licensing maintain the burden of disclosure would be a more effective and appropriate approach because it would: ...

"- Remove unnecessary problems around the accuracy of information the provider has, due to director turnover, separate personnel files, etc." (Felice)

Response:

Please refer to responses to Comments 13) and 19), paragraph one.

148) Comment:

"Parents can call the Licensing Office for the exemption information, and have the right to receive information from CCL about any complaints or licensing violations in the provider's record. Having Community Care Licensing maintain the burden of disclosure would be a more effective and appropriate approach because it would: ...

"- Remove unnecessary burden around privacy of information from the provider setting. For example, providers frequently cannot leave common areas to disclose private information, and even when they can, child care settings are not designed for privacy, they are designed for visual and auditory accessibility." (Felice)

Response:

Please refer to response to Comment 13).

149) Comment:

"Parents can call the Licensing Office for the exemption information, and have the right to receive information from CCL about any complaints or licensing violations in the provider's record. Having Community Care Licensing maintain the burden of disclosure would be a more effective and appropriate approach because it would: ...

"- Remove some of the fear and embarrassment providers have around disclosing information personally. Therefore, it would relieve some of the potential staffing problems and crises that arise when potential and current providers face exposure." (Felice)

Response:

Please refer to response to Comment 13).

150) Comment:

"Our second comment is that we think that three of the proposed regulations are good changes, and we support them.

"First, the enhanced notification of parents' rights, including the flyer.

"Second, the provision for review at the child care facility of reports of Licensing visits and substantiated complaints. We distinguish that from requiring providers to also reveal information about the criminal-record exemption, which we feel is a very different matter.

"And finally, we agree with the change that allows provider -- custodial parents to reveal in writing that a parent not be allowed to pick up a child. And the suggestion we have is that in addition to requiring that parents show a copy of any court orders that prohibit a parent from picking up a child or having contact with a child, we suggest that providers be required to keep a copy of that document. And that change would protect the providers, to make sure that they're doing what they should be doing based on the court order. It would also be very helpful in case law enforcement is ever required to come in, because then the provider would have proof of what she's supposed to be doing or what she's not supposed to be doing." Testifier provides further detail of their support of these provision in the testifier's written testimony. (Branch)

Response:

The CDSS appreciates the testifier's comments and agrees that the amendments will improve the system and lead to higher-quality child care. While the proposed amendments do not require the licensee to obtain a copy of a court order pursuant to California Health and Safety Code Section 1596.857, there is no prohibition against requesting a copy of the court order from the custodial parent.

Sections 101218.1(b)(5)/102419(a)(5)

151) Comment:

"This section should specify that the inspection of a child care center may only take place within normal hours of operation. (See similar provision in Family Care Homes, Section 102419(e).)" (PACE)

Response:

The provisions in the Health and Safety Code and the regulations restrict the Departments' inspection authority of family child care homes because of Constitutional privacy concerns related to a family child care home.

152) Comment:

"First, sections 101218.1(b)(5) and 102419(a)(5) identify the right of a parent or authorized representative to complain to the local licensing office and inspect the child care center or family child care home without discrimination or retaliation, in accordance with Health and Safety Code section 1596.857. However, the penalties contained in Health and Safety Code section 1596.857 have been replicated only in the regulation relating to family child care homes (section 102419(f)), and not in the regulation pertaining to child care centers (section 101218.1). We believe the language of section 102419(f) should be replicated in section 101218.1 to avoid inconsistency." (Fellmeth/Back)

Response:

For child care centers, existing regulation Section 101195 contains the progressive civil penalty provisions. The Department determined that these penalties were appropriate for violations of the new regulation provisions. On the other hand, there was no existing regulation as to progressive civil penalties for family child care home licensees. Therefore, the Department developed new provisions for this facility type.

Section 101218.1(b)(6)

153) Comment:

"This is a very awkward sentence. It should be re-written to clarify issue of custodial/non-custodial parent vs. other authorized persons visiting or picking up a child." (PACE)

Response:

The Department disagrees that this section is awkward and unclear, however, the Department agrees with the testifier that this section could be improved. The Department is considering a "clean-up" Child Care Program regulations package to follow these regulations and may revise this section at that time. Please refer to response to Comment 143).

Sections 101218.1(b)(8)/102419(a)(8)

154) Comment:

"We recommend an amendment shifting the responsibility of criminal exemption disclosure from that of the licensee to that of the local licensing agency consistent and in accordance with Health and Safety Code Section 1596.859. Disclosure by the licensee should not be required nor prohibited, allowing licensees the option to develop and implement administrative procedures that are best suited to individual business styles." (Hampe/Howell)

Response:

Please refer to response to Comment 13).

155) Comment:

"Before adopting regulations requiring disclosures about criminal records and criminal record exemptions, Licensing should have developed additional notification requirements and forms for those persons whose criminal information would be disclosed (employees, residents, etc.).

"Need New Notice Form for Employees Regarding Criminal Record Disclosure: Licensing should have developed a new employee notice form and receipt to notify existing employees and prospective employees about regulations that require disclosure about their criminal records. They should have the right to make an informed decision about whether they wish to apply for employment or continue employment in child care facilities that must tell people that they have a criminal record or a criminal record exemption.

"1. Employees and prospective employees should be notified that, if their criminal record clearance is rejected initially or rejected later, child care providers will be required to notify current and future clients, in writing, that they have a criminal record and cannot be on the premises when children are in care.

"2. Employees and prospective employees should be notified that parents and prospective clients may ask and be told that they have a criminal record exemption.

"3. Employees and prospective employees should be notified that if any information about their criminal clearance rejection or criminal record exemption is included in the child care facility's public Licensing file, it can be accessed by anyone and it can be posted on the internet.

"4. In the future, everyone should be notified about criminal record disclosure regulations prior to their application for a criminal record clearance or criminal record exemption. " (Wyatt)

Response:

1. Please refer to response to Comment 88).
2. Please refer to response to Comment 88), number 2.
3. Please refer to response to Comment 88), number 2.
4. Please refer to response to Comment 88), number 2.

156) Comment:

"Disclosure About Non-Employee Criminal Record Exemptions: License applicants seeking criminal record exemptions for themselves or their live-in boyfriends or spouses, etc., should be clearly notified that they will be required to tell parents, if asked, the names of everyone who obtains a criminal record exemption. They should understand that if this information is included in their public Licensing files, it can be accessed by anyone and it can be posted on the internet." (Wyatt)

Response:

Please refer to response to Comment 88), number 2.

157) Comment:

"The Governor has issued an Executive Order that has caused the Department of Social Services, Community Care Licensing, to issue 'New Child Care Requirements' to Child Care Center and Family Child Care Home Licensees. This edict has generated new requirements that put the health and well-being of the childcare industry of California in peril. It is important that the new requirements be modified now, at a time when sensible change should be fairly simple.

"The order requires that licensees reveal the name of every person at the facility who has a criminal record EXEMPTION to work or live in a child care facility (as opposed to a criminal record 'clearance'). We are not required to tell why the exemption was granted, simply that there is an 'exemption' due to a prior criminal record.

"I have grave concerns about this policy. I understand that safety of children is our highest priority. When a person or facility goes through the lengthy process of obtaining an exemption, and is actually granted one, that person has gone through 'due process'. Each person going through this in-depth process must reveal the details of their criminal conviction and show proof they have completed the court ordered sentence/or rehabilitation process. After all documentation has been reviewed, a person may or may not be granted an exemption to work in a licensed child care facility. This current process to obtain an exemption, is, in actuality, a form of 'clearance'." (VanGalio)

Response:

Please refer to response to Comment 1).

158) Comment:

"I also understand issues of personal privacy. Currently there appears to be no time limit on the conviction that precipitated the 'exemption' (some go back 30 years with no criminal activity since), and there appears no mechanism to change an 'exemption' to a clearance. I understand there should be a balance of keeping children safe from people who would harm them with some way of protecting employees' privacy. The current process does just that and has been extremely effective in protecting children from harm. One negative side effect of this blanket policy of revealing information is that children's environments and parents' trust will be disrupted when the Director and parent discuss the number of 'former criminals' currently working in their program. Surely this does not begin a relationship with a family on a positive note. An exempted employee who has proven to be an excellent educator over many years of service to children may have to choose to leave the field due to this violation of privacy rather than suffer the humiliation of revealing a mistake made long ago. This is a time we need good people to work in the field of early care and education!" (VanGalio)

Response:

Please refer to response to Comment 13).

159) Comment:

"The burden for permitting individuals with any kind of misdemeanor or felony conviction to be with children needs to continue to be with the Department of Social Services and the Caregiver Background Check Bureau, (and any other appropriate Law Enforcement/Justice System procedures). Broadcasting the names of individuals with exemptions by licensed centers and family child care licensees does not improve the quality of care for our children. Instead it creates an atmosphere of humiliation of the employee/resident, parental fears, and potential violation of confidentiality. If there should be more stringent requirements in the granting of exemptions, do it at the level of the exemption process, not at the level of employers being required to reveal

personal information, after the exemption has been granted. There is a huge conflict here when we are under great pressure to protect the privacy of employee information, only to reveal their most personal errors to parents." (VanGalio)

Response:

Please refer to responses to Comments 1) and 13).

160) Comment:

"I am hopeful there will soon be some clear-headed balance, assuring providers that background checks are thorough and appropriate, that individuals who have a criminal conviction of a nature that could be dangerous to children are, in fact, not allowed to be with children and not granted exemptions to work with children. This should be balanced with provisions for an individual who has already paid their 'debt to society' and desires to have that incident a private issue that is not broadcast publicly. Please help see that this policy (publishing the name of exempted employees by the provider) is addressed, discussed, and changed before it becomes regulation!" (VanGalio)

Response:

Please refer to response to Comment 1). Additionally, the regulations do not require the licensee to publish the names of exempted family members, adults living in the home or employees.

161) Comment:

"The Sacramento County Local Child Care & Development Planning Council recommends the following changes to the proposed regulations:

"1) Amend Section 101218.1 (b) (8) to read:

"To be informed by the licensee, upon request, of the name address and telephone number of the local licensing office to obtain the name and type of association to the child care center for any adult who has been granted a criminal record exemption.

"2) Amend Section 102419 (a) (8) to read:

"To be informed by the licensee, upon request, of the name address and telephone number of the local licensing office to obtain the name and type of association to the child care center for any adult who has been granted a criminal record exemption."  
(Hall/Stone)

Response:

Please refer to response to Comment 13).



162) Comment:

"Florence Crittenton Services (FCS) provides Infant Child Development services for 100 children and families annually through 2 licensed centers and a network of licensed family child care homes. Community Care licensing screens FCS employee and provider criminal backgrounds and determines who can or cannot work with children in our licensed facilities. FCS has always held both employee's and provider's personal information in the strictest confidence. FCS believes it is vital that Community Care Licensing Division of DSS, not childcare providers, be responsible for disclosing criminal background information to parents upon request.

"If FCS is required to release the names of individuals in our employ who have licensing exemptions directly to parents this will:

"Strain employer employee relationships.

"Cause teaching staff with DSS Licensing exemptions to feel humiliated by the director or other administration staff.

"Set up a climate of anxiety and distrust, which is not beneficial for children or parents.

"Set up a climate of anxiety and distrust which is not conducive to center teamwork or teaching.

"Create an unmanageable parent preference for certain teachers and classrooms over other teachers and classrooms.

"Cause additional teaching staff turnover.

"Make finding qualified teaching staff that wants to work in this field even more difficult." (Jerene)

Response:

Please refer to responses to Comments 1), 13) and 14).

163) Comment:

"DSS is a government agency. FCS is a community-based organization. FCS teaching staff, and providers, along with the families we serve; create a vital and caring community in which we can carry out our mission to strengthen the lives of vulnerable children and families. Our organization operates where our staff, providers and families usually live. FCS does not want to be part of destroying any of our community member's lives. Revealing employee DSS Licensing exemptions would put an undue burden on our work within the community. FCS believes it is vital that Community Care Licensing Division of DSS, not childcare providers, be responsible for disclosing criminal background information to parents upon request. Thank you." (Jerene)

Response:

Please refer to response to Comment 13).

Sections 101218.1(b)(8)/102419(a)(8)

164) Comment:

"... I have been in child care for almost 16 years now. I've been at my job for 12 years. I am a preschool teacher and an educational coordinator. And this personally affects me, because 20 years ago I did something very stupid. It has nothing to do with providing the care that I do for the children. ... I was granted an exception; and ... Licensing told me that it was never ... going to come back and haunt me. ... parents do not have the right to invade my privacy, just like I don't have the right to invade theirs.

"I have been working with children, like I say, for almost 16 years. And there's a law that takes the privacy. ... These children, ... because of the privacy, I don't know if they're infected with some kind of disease that I can catch on, take it to my family, and my family can pass it on to other people. I have no right to know that. So I strongly believe that parents don't have the right to invade my privacy. ... that's how strongly I believe in that, that I'm here. I came all the way from San Diego, just to be here.

"... I would not like the parents to judge me from what I did 20 years ago. I was 20 years old. I wouldn't want them going in the parking lot and gossiping. And I can tell you for sure that I know, too, parents, where I work, they'll be the ones asking, and they'll be the ones talking. And I've been there 12 years; and the trust the parents have in me and the trust that I have on taking care of their children, I don't think this has nothing to do with that." (Medina)

Response:

Please refer to response to Comment 1).

165) Comment:

"I have colleagues who have people working for them who have criminal record exemptions, who have not a clue as to how subject to public humiliation they are. There are no provisions for notifying people who have criminal exemptions already, and maybe for those who were applying for them, that they could be subject to having their names posted by accident or ... given out to everyone who asks; having records about the fact that they've had a criminal record exemption in a public file of a provider, and having that information, or just public information, go into the newspaper, go on the Internet. We have a county where they put information like that into the newspaper. ... they scanned all of the records in the public files and put them on the Internet. ... maybe we'll have a day when Licensing will have an opportunity for parents to check on the Internet, on the record of the provider. It's public

information. It should be more accessible as to the citations and whether or not somebody has a criminal-record exemption and who's not allowed there." (Wyatt)

Response:

Please refer to responses to Comments 1) and 88), numbers 2 and 4.

166) Comment:

"People need to be notified before they ever apply for a criminal record clearance; that whether they got an exemption later or failed, their names could be all over the world, out there, exposed; the fact that they have committed maybe a very minor crime a long, long time ago; even though they may be a person of great character today." (Wyatt)

Response:

Please refer to response to Comment 88), number 2.

167) Comment:

"I'm President of the Southern Section of California Child Development Administrators Association. I am also the Director of Child Development Services in Orange County, the wonderful county that started this stuff. CCDAA supported the Dunn Bill. If we are going to be required to tell parents or have Licensing tell parents when we do have a person working in our center that has an exemption; then we need to go a step further, and tell them the nature of their crime." (Tucker)

Response:

Please refer to response to Comment 1).

168) Comment:

"Eighteen years ago, my four-hour-a-day custodian, who works a second job to support his family, stole pipe off of a construction site and was charged with a felony. He was told that his record was expunged and sealed. ... So although he worked for a school district, the K-12 program, when we fingerprinted him, he got a hit. We fought the battle to get him an exemption. This was before the Orange County Register. And now, we have to tell parents that, yes, he has a criminal record exemption. ... I mean, we don't tell them; but if they ask, they call the Department of Licensing, and they would tell him, 'Yes, John Doe has a criminal record exemption.' And the parents' minds go right to the most horrible of thing that could happen to their child. So if we are going to be, as a result of a news medium poking their nose into the lives of families that are working, striving to make a living, and having to release the names of these folks, then we need the ability to go a step further and to tell them the crime for which they have been exempted." (Tucker)

Response:

Please refer to response to Comment 1).

169) Comment:

"Our membership ... would like for the disclosure to come from the Department of Social Services as opposed to coming from the provider. We feel that that is as effective a way of getting the information out; and that there are advantages to it. Whereas we're concerned about one of the disadvantages, being the lack of distance that is created, if the caregiver is giving it out and that the caregiver may have to be called away from their primary responsibility, which is carrying for the children, to disclose the information.

"... our membership also has concerns about the employer/employee issues that may arise out of that. Many of them are employers, and they're concerned. They're not sure what may come up in terms of them as an employer releasing the information. They felt that it would be better if it could be released through the Department of Social Services. Our experience or the experiences that we have received back from our membership in terms of what's happened since it's been given out, is that there has been people who are very nervous about it but that they -- and that most often, they are very minimal -- I know in our agency, we have a person that does not work directly with the children but is required to be cleared because of something that happened when this person was 19. They're 32 now, actually went through California's subsidized systems, and have done really well in their career, yet will be working with the very parents that they will be required to give the information out to. So pretty much the concern is that they really believe strongly that the information would be just as effective and not harmful if it were released by the Department of Social Services, ..." (Herzfeld)

Response:

Please refer to response to Comment 13).

170) Comment:

"1. Department of Social Services (DSS), not child care providers should be responsible for disclosing the names of individuals in programs who have received criminal record exemptions when requested by the parent.

"Utilizing a central source for the disclosure of the name and program affiliation will provide greater assurance that there is consistency with the release of this information. DSS is the government entity responsible for licensing and monitoring child care programs. Therefore, it is their job and role to inform parents both of the process of licensing (including criminal record exemptions) and the results of that process. Parents are more likely to seek detailed information from DSS than from the child care program. Therefore, the process

for releasing and obtaining the information through DSS is more thorough, complete and accurate.

"Recommendation:

- "a. Require providers to display the poster in a prominent location indicating that parents may obtain information from licensing,
- "b. Require licensing to provide information on the criminal record exemption process and the specific names and relationships of any individuals associated with a program who has received a criminal record exemption." (Stromgren)

Response:

Please refer to response to Comment 13).

171) Comment:

- "2. The lack of details regarding the nature of the crime for which an exemption is granted and both the length of time since the crime was committed and the length of time since the exemption was granted lends itself to unduly scaring parents who are seeking child care and puts a 'dark shadow' over all child care unnecessarily.

"The reaction by most parents, especially those seeking a new child care provider, to hearing that an individual in a child care setting has a criminal record exemption will be to assume the most heinous of crimes. Child care is already in short supply. DSS has a thorough process for screening out providers who should not be caring for children. There is no evidence that any individual who has received a criminal record exemption has harmed a child in any way.

"Recommendation:

- "a. Require DSS to explain the process for obtaining a criminal record exemption including information on the 51 non-exemptible crimes and an example of a minor misdemeanor when a parent requests information from a provider's public file.
- "b. Require DSS to inform the parents requesting information how long ago the crime was committed for which an exemption was granted and/or how long ago the exemption was granted which may help to clarify how long ago the crime was committed." (Stromgren)

Response:

Please refer to responses to Comments 1) and 107).

172) Comment:

"4. Individuals who have been granted a criminal record exemption (other than licensed family child care providers and center administrative staff) have not been notified by DSS that their criminal record information is now public.

"Unless notified by their employers, a large percentage of individuals who have been granted a criminal record exemption may not be aware that their exemption information will now be available to the public upon request.

"Recommendation:

"a. Require DSS to immediately notify (in writing) all individuals who have obtained a criminal record exemption that this information is available to the public upon request." (Stromgren)

Response:

Please refer to responses to Comments 1) and 88), number 2. Additionally, the CBS lawsuit only affects child day care facilities.

173) Comment:

"... I believe that that in terms of the previous testimony that's been offered, I agree that Section 101218.1(b)(8) and 102419(a)(8) should be modified to -- so that the burden for disclosure of information remains with DSS." (Wilson)

Response:

Please refer to response to Comment 13).

174) Comment:

"... I am the director and the co-owner of Cedar Creek Montessori, which is a preschool child care center in Berkeley. Child care facilities, as virtually everyone else has mentioned, should not be required to be the agency that informs parents whether or not there are any staff with exemptions at that facility, or to give the names of individuals with exemptions to the parents. That role is inappropriate for the facilities and should rest solely with Community Care Licensing.

"Teachers do their best work when they feel secure in their jobs, and when they trust the facilities director to support them. When child care facilities are put in the position of publicly exposing their employees' private history, it erodes the important trust between the employer and the employee. The facilities could still be the main avenue by which parents were informed of their right to request the information from Community Care Licensing. That is an appropriate function of the facilities; but parents should be directed solely to Community Care Licensing for any information on exemptions pertaining to a particular facility." (Woodward)

Response:

Please refer to response to Comment 13).

175) Comment:

"Last spring, the parent reaction to the issue of exemptions at my school was marked. The parents, of course, want their child in a safe place. That is their ultimate concern. However, they have told me that they were fine, knowing the state checks the fingerprints of child care workers and eliminates those with serious records. The parents are concerned about people with records of violent crimes or crimes against children. But as long as these people are eliminated, as they already have been, the parents feel safe. The parents at my school have also voiced concern that their children's teachers are respected and given the same civil rights and privacy rights that the parents themselves take for granted. As one parent said last spring, when the new regulations affected one of his child's favorite teachers, quote, 'I know this is supposed to help me feel my child is being protected, but why do I feel violated?' ..." (Woodward)

Response:

Please refer to response to Comment 1).

176) Comment:

"... the goal is one of child safety. If providers, and I think especially small family day care homes, are frightened by the current disclosure regulations, they are going to be more likely simply to operate without a license. Having more unlicensed facilities presents a greater threat to child safety because then those facilities are not monitored by any agency." (Woodward)

Response:

Please refer to response to Comment 10).

177) Comment:

"... I also think I want to reiterate what other people have said that the burden of proof for any sort of disclosure should rest with the Department of Social Services at the state level. When I think about what it is we are doing in terms of sending a message about child care workers as criminals is shocking, when I think about the other workers that we represent in our union." (Monrad)

Response:

Please refer to response to Comment 13).

178) Comment:

"For example, it's very hard to imagine that a county welfare worker in San Jose, for example, who is determining eligibility for CalWORKs would have to disclose to their client if they have had any sort of misdemeanor or felony record. It is not a condition of employment to share their background with any of their clients. I don't understand why it should be for a child care worker who is a direct care worker.

"We also represent thousands and thousands of home-care workers, direct care workers who work in people's homes and provide domestic services to disabled seniors and children. They are not put under the same sort of obligation. Employers at various county levels with the state may require drug testing, criminal background screening, et cetera; but the employees themselves, nor their employers, are obligated to share this information with their clients.

"So I think that it's very important to reiterate what other people have said, that these regulations not be tweaked or revised or anything, but they actually be dropped." (Monrad)

Response:

Please refer to response to Comment 1).

179) Comment:

"Also, I wanted to support what other folk have been saying, that in light of the changes, that the burden of disclosure should remain with the Department of Social Services and not with the provider." (Kriege)

Response:

Please refer to response to Comment 13).

180) Comment:

"... from Florence Crittenden Services of San Francisco. And we have two centers and a network of family child care homes. And I believe that Community Care Licensing does an excellent job, screening for criminal exemptions and determining who is exempt. And it would really put an undue burden on our program to talk to parents about who is exempt and say who is exempt to parents. And, you know, there's lots of parents who want child care, and we want to provide quality child care, and we know that Community Care Licensing does a good job in determining the exemptions because no one has done anything in a child care center who has been exempted by Licensing -- done anything to harm a child." (Jerene)

Response:

Please refer to response to Comment 13).



181) Comment:

"... put an undue burden on us to talk to parents about pointing out which teachers are exempt or assistants are exempt, or site supervisors saying that they're exempt, and trying to explain that to parents, and what that means and what that doesn't mean and, you know, having those children still coming into our program and not having -- you know, it's going to create problems between staff, can create problems for families of staff, it can create problems with the staff themselves. And I think that it should be on Licensing, not on the provider, not on our site supervisor, center directors to talk to parents about who's exempt and not exempt and what that means." (Jerene)

Response:

Please refer to response to Comment 1), second paragraph, and response to Comment 13).

182) Comment:

"The San Francisco Child Care Planning and Advisory Council (CPAC) acts as the local child care planning council and represents a cross-section of San Francisco residents. We plan child care services in the city and county; evaluate child care supply and demand; advise the city government and the school district; and inform the public regarding child care issues. We are here today to articulate our position regarding the Community Care Licensing regulations regarding the disclosure of criminal background exemption information of child care providers. Our recommendation is that, as with other types of licensing information, the burden of information disclosure remains that of the Community Care Licensing Division of the California Department of Social Services.

"The CPAC membership believes that the Community Care Licensing Division of the California Department of Social Services was designed to ensure that licensed child care providers are adequately screened for criminal backgrounds. Further, that agency is responsible for determining exemptions for criminal convictions that allow individuals to work in the child care field. Individuals whose criminal history might be a risk to the health and safety of children are denied licenses to work as child care providers. There is no evidence that we are aware of that any child in California has ever been harmed by an individual providing care with an exemption. This suggests that the DSS exemption system works." (Felice)

Response:

The CDSS appreciates the opportunity to address your concerns. Please refer to response to Comment 13).

183) Comment:

"The CPAC membership specifically recommends that the regulations 101218.1(b)(8) (child care centers) and 102419(a)(8) (family child care homes) be modified to require that the California Department of Social Services, not child care providers, be responsible for disclosing criminal background exemption information to parents upon request and that this information be provided within 48 hours of the request. As stated in the regulations, the Community Care Licensing Division offices are not permitted to disclose any information to parents about the nature of any exempted crime. Child care providers are also not permitted to disclose any information to parents about the nature of the exempted crime (unless a provider chooses to disclose information about his or her own exemption).

"Community Care Licensing maintains records on child care providers' continuing eligibility to work in the field, including records of complaints against providers and violations of their licensing status. The agency is responsible for monitoring the compliance of child care providers with the conditions of licensing. Therefore, we feel that agency should also be the body required to release all related information.

"The CPAC membership believes that parents and the public have the right to assurance of the health and safety of children in licensed child care programs. Community Care Licensing is the monitoring agency that is obligated to offer this assurance." (Felice)

Response:

Please refer to response to Comment 13).

184) Comment:

"The CPAC membership believes that it should not be the responsibility of child care providers to disclose private information about themselves or their employees when that information is available at the regulatory agency, Community Care Licensing. We believe that requiring child care providers to disclose the names of individuals who have a criminal background exemption presents a new burden to their businesses. It requires providers to assume the tasks of tracking their employees' histories and responding to parent requests. It exacerbates their ability to recruit and hire staff at a time when there is a severe shortage of staff in the child care field. It risk communication of misleading or inaccurate information, particularly with bilingual or monolingual parents and providers. It potentially and unnecessarily undermines the trust and confidence that is needed between child care provider and parent. All of these problems would be at least partially mitigated if DSS, not providers, had the responsibility to disclose exemption information to parents." (Felice)

Response:

Please refer to response to Comment 13).

185) Comment:

"If the burden shifts to the providers, it could potentially have a major economic impact on California small businesses due to staff turnover and recruitment considerations (as well as the staff time required to carry out additional recordkeeping and disclosure tasks – from public hearing, in addition to written). While there may still be some economic impact if DSS does the disclosure, there will be significant mitigation of the impact by keeping the responsibility outside of the child care setting." (Felice)

Response:

Please refer to responses to Comments 13) and 14).

186) Comment:

"CPAC also strongly recommends not exceeding the court-ordered mandate for disclosure. We feel that only exemptions granted from 1995 and beyond should be disclosed. As previously established, Community Care Licensing takes great pains to ensure that only appropriate persons are granted licenses. A California appellate court has mandated that information from 1995 to the present that was previously considered confidential now be released. We maintain that information not covered by that order should remain confidential. We do not understand why Community Care Licensing would go beyond the bounds of that court order." (Felice)

Response:

Please refer to response to Comment 1).

187) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that:

- "- Potential new licensed providers have been discouraged from pursuing a license because of fears about disclosure of their 'past,' even when their convictions have been for minor actions dating back by 10, 20 or more years.

"In some cases, family members were not aware of these old events, and individuals feared disclosure. One provider who had followed all the court mandates from a case years ago will now not go forward with licensing.

"Even though she wants to start a business, a provider reported that she was discouraged about paying the licensing fees if there is any question about her eligibility because of a past shoplifting conviction." (Felice)

Response:

Please refer to response to Comment 1).

188) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that: ...

"- Existing providers have felt humiliated by the requirement that they reveal the fact that they have a criminal history, particularly when the events were minor and ancient and they have engaged in actions to rehabilitate themselves. Some have said they would close their programs because of these regulations." (Felice)

Response:

Please refer to responses to Comments 1) and 13).

189) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that: ...

"Child care has been promoted as an appropriate field for women who are moving off welfare into the workforce. In some cases, these women would achieve criminal background exemptions, but will be discouraged from choosing this career path because of the disclosure requirement." (Felice)

Response:

Please refer to response to Comment 1).

190) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that: ...

"Disclosure of criminal background exemptions will disadvantage those providers who are just starting up or those who need additional business. The exemptions disclosure may make them less competitive with other providers." (Felice)

Response:

Please refer to response to Comment 1).

191) Comment:

"In summary, CPAC members believe that DSS/Community Care Licensing is responsible for disclosing criminal background exemptions to parents using licensed child care, and that child care providers should not be required to make these disclosures themselves." (Felice)

Response:

Please refer to response to Comment 13).

192) Comment:

"... DSS, and not the child care providers, should be responsible for disclosing criminal background exemption information to parents upon request.

"- This method would be more effective than disclosure by providers, or would be as effective and less burdensome to providers.

"- This method would lessen the economic impact of the proposed regulations on small businesses." (Branch)

Response:

Please refer to response to Comment 13).

193) Comment:

"DSS, not child care providers, should be responsible for disclosing criminal background exemption information to parents upon request.

"Under the proposed regulations, upon request by a parent, a provider must disclose the name and type of association to the facility of any adult who has been granted a criminal record exemption by DSS. Parents also have the option of calling the local

licensing office for the information. (22 CCR Section 101218.1(b)(8) – child care centers; and 22 CCR Section 102419(a)(8) – family child care homes). Neither providers nor the local licensing office may disclose any information to parents about the nature of any exempted crime." (Branch)

Response:

Please refer to response to Comment 13).

194) Comment:

"The Child Care Law Center recommends that Section 101218.1(b)(8) (child care centers) and Section 102419(a)(8) (family child care homes) be modified to read as follows:

"Section 101218.1(b)(8): To be informed by the local licensing office, upon request, of the name and type of association to the child care center of any adult who has been granted a criminal record exemption. Such information must be provided by the local licensing office within 48 hours of the request.

"Section 102419(a)(8): To be informed by the local licensing office, upon request, of the name and type of association to the family child care home of any adult who has been granted a criminal record exemption. Such information must be provided by the local licensing office within 48 hours of the request.

"There are two legal reasons for these proposed modifications. First, modifying the regulations to require DSS, not providers, to disclose criminal background exemption information would be more effective or would be as effective and less burdensome to providers. Second, modifying the regulations to require disclosure by DSS rather than providers would reduce the economic impact of the regulations on small businesses." (Branch)

Response:

Please refer to response to Comment 13). Additionally, providers frequently need to have private conversations with parents regarding a child's medical needs, financial matters and other such personal information. Therefore, the Department does not believe the disclosure requirement creates a burden.

195) Comment:

"CCLC expects that DSS will be receiving comments from individual parents and providers, which contain specific facts supporting the change the CCLC proposes. However, based on CCLC's longstanding relationship with child care stakeholders, we submit that such evidence includes the following:

"- In both centers and family child care homes, it is often difficult to find a private space in which to make a requested disclosure to a parent because there are insufficient staff with whom to leave the children, and it is inappropriate to make the requested disclosure in front of the children." (Branch)

Response:

Please refer to response to Comment 13).

196) Comment:

"CCLC expects that DSS will be receiving comments from individual parents and providers, which contain specific facts supporting the change the CCLC proposes. However, based on CCLC's longstanding relationship with child care stakeholders, we submit that such evidence includes the following: ...

"Providers are uncertain about how much information to disclose to parents." (Branch)

Response:

Please refer to response 19), first paragraph.

197) Comment:

"CCLC expects that DSS will be receiving comments from individual parents and providers, which contain specific facts supporting the change the CCLC proposes. However, based on CCLC's longstanding relationship with child care stakeholders, we submit that such evidence includes the following: ...

"After a provider discloses information to a parent about a particular exemption, the parent often will insist on knowing what crime was committed even after being told that the provider is not allowed – under the law – to disclose the information." (Branch)

Response:

Please refer to response to Comment 19).

198) Comment:

"CCLC expects that DSS will be receiving comments from individual parents and providers, which contain specific facts supporting the change the CCLC proposes. However, based on CCLC's longstanding relationship with child care stakeholders, we submit that such evidence includes the following: ...

"Providers who disclose too much information run the risk of violating other laws, and open themselves up to claims for defamation and invasion of privacy." (Branch)

Response:

Please refer to response to Comment 19).

199) Comment:

"CCLC expects that DSS will be receiving comments from individual parents and providers, which contain specific facts supporting the change the CCLC proposes. However, based on CCLC's longstanding relationship with child care stakeholders, we submit that such evidence includes the following: ...

"It is less administratively burdensome on providers to refer parents to DSS rather than having to disclose the exemption information themselves." (Branch)

Response:

Please refer to response to Comment 19).

200) Comment:

a. "Disclosure by DSS Would Reduce the Economic Impact of the Regulations on Small Businesses. DSS must also assess the regulations' potential for adverse economic impact on California business enterprises and individuals, and must avoid the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements [Cal. Gov't Code Section 11346.3(West 2002)]. Further, DSS must provide the Office of Administrative Law (OAL) with a 'final statement of reasons' setting forth the basis for rejecting any proposed alternatives that would reduce the adverse impact on small businesses [Cal. Gov't Code Section 11346.9(a)(5) (West 2002)].

"Again, CCLC expects that individual facts and comments from providers will show that DSS disclosure of criminal record exemptions will take less of a toll on small businesses in California than requiring provider disclosure of such information. Based on CCLC's familiarity with the issues confronting parents and providers, we submit that such evidence is likely to include the following:

- b. "- Centers and family child care homes have lost staff, or have found it more difficult to recruit staff, because of the new requirements.
- c. "- Center directors and family child care providers are concerned about potential liability for disclosing the required information to a parent, because they fear that parents will insist on knowing more than the required information.
- d. "- Some providers are so concerned about having to disclose something from their distant past that they would rather close their business rather than be forced



to make disclosure. They would be less concerned if DSS were the initial source of such information.

- e. "- Some providers will decline to hire prospective staff – and are even considering whether they can terminate an existing staffperson – rather than having to disclose that individual's exemption to a parent." (Branch)

Response:

- a. Please refer to responses to Comments 14) and 118), first paragraph.
- b. Please refer to responses to Comments 1) and 14).
- c. Please refer to response to Comment 19).
- d. Please refer to response to Comment 13).
- e. Please refer to response to Comment 21).

201) Comment:

"... with the Tenderloin Child Care Center, and also representing the San Francisco Providers Association. And my testimony is the same as Elizabeth and Melinda's (Testifier's Harris and Felice); that the San Francisco Providers Association is very concerned with the negative impact it will have on the field that it's already -- there's already such a shortage of staffing, as described by both Melinda and Elizabeth; and that this disclosure does not improve the quality of care but, rather, have a negative impact, also on the relationship that, as providers, we spend such a great deal of energy trying to have with parents. And that it's the Community Licensing, not the providers, being responsible that's disclosing criminal background. So the Providers Association's stand is that we would like Community Licensing, not the providers being responsible." (Casey-Lerma)

Response:

Please refer to response to Comment 13).

202) Comment:

"One of our providers works with teens -- people in their late teens; and she trains them on how to work with children. She's been very, very encouraged by their performance. And she has three youth in particular who she thinks would make really good child care workers. In fact, she says they're better than some of the teachers she already has, with EC units. On the other hand, she knows that they are on probation. She is very concerned that these are teens who are really trying to turn their life around, they're trying to move beyond their crimes that they committed in the past; and they're not going to want to go into a field where every time they go to a new job,

there's going to be the potential for parents to be told that they did something criminal. The parents are not going to be told what the crime was; they're simply going to be told that there was a problem in their past. Many of our providers are concerned that this regulation simply increases parental anxiety." (Harris)

Response:

Please refer to response to Comment 1).

Sections 101218.1(b)(8)/102419(d)(3)

203) Comment:

"First, as several other speakers have said, including Melinda Felice, we're concerned about the requirement that child care providers, in addition to the Department of Social Services, reveal information about the criminal exemptions. We believe that only the Department of Social Services should have to reveal that information. We feel that that method would be as effective for parents, and substantially less burdensome for child care providers. We're particularly concerned about the needs of family child care providers; and the fact that they are small businesses and that we believe that the Department of Social Services has not adequately taken into consideration the needs of those small businesses and the impact on the small businesses, of these regulations." (Branch)

Response:

Please refer to response to Comment 13).

204) Comment:

"As Melinda (testifier Felice) said earlier, we also believe that the Department of Social Services should reveal -- should respond to parental inquiries about criminal-record issues or other issues within 48 hours of the time that the request is made. That would ensure that parents have appropriate access to the information; and that providers are not burdened with having to reveal this information." (Branch)

Response:

Please refer to response to Comment 13).

Sections 101218.1(c)/102419(b)

205) Comment:

"We support the modification of the required written Notification of Parent Rights Form as the appropriate way for providers to communicate the right to receive exemption information from Community Care Licensing." (Felice)

Response:

Please refer to response to Comment 13).

Sections 101218.1(c) and (e)/102419(b) and (d)

206) Comment:

"The Children's Council of San Francisco (a child care alternative payments and resource and referral agency) has received a number of calls from providers about the Emergency Regulations. It has also conducted a survey of providers who attend meetings and training. Evidence from the provider survey suggests that: ...

"- Providers comment that having to use the required poster sets up a climate of anxiety and distrust rather than the welcoming and safe environment they wish to create. They feel that giving parents a written notification of parent rights is adequate, particularly in programs (the majority) where there is no employee with a criminal background exemption." (Felice)

Response:

The purpose of this requirement is to ensure parents and authorized representatives are informed of their right to specified information and that these rights (PUB 393, Child Care Center Notification of Parents' Rights) must be posted in a prominent, publicly accessible area in the child care facility.

During the course of the stakeholders' meetings and public hearings, numerous family child care home licensees testified that the initial PUB 394 (8/02), Family Child Care Home Notification of Parents Rights, was too large and did not conform to a home-like atmosphere. Subsequent to the public hearings the CDSS revised the form to a standard 8 ½" X 11" size and now requires that the poster only be displayed in the family child care home when children are in care.

Section 101218.1(d)(2)

207) Comment:

"What shall the licensee do if the parent refuses to initial the forms? (See similar provision in Family Care Homes, Section 102419(g).)" (PACE)

Response:

There is nothing to prohibit child care center staff from documenting the child's file when a parent or authorized representative refuses to sign the documentation.

Section 102419(d)(3)

208) Comment:

"The compliance enforcement provisions of the family child care regulations, 22 CCR Section 102419(d)(3), should be clarified so that they give fair notice to providers of precisely what to expect.

"Under the emergency family child care regulations, if a provider fails to comply with a plan of correction for a violation of the new regulations, DSS will assess civil penalties as set forth in 22 CCR Section 102419(d)(3)(A) – (C). These provisions are newly drafted, and stand in contrast to the civil penalty provisions for comparable violations by child care centers. Those violations are explicitly governed by DSS' general, longstanding regulations in 22 CCR Sect. 101195. This regulatory provision is familiar to DSS officials as well as to child care center operators, and it incorporates by reference the longstanding 'compliance deficiency' standards of 22 CCR Sect. 101193. Thus, child care centers will have clear expectations about the compliance process associated with the new emergency regulations.

"Unfortunately, family child care providers do not have those clear expectations. DSS' attempt to devise a brand new set of compliance standards and procedures for family child care opens more questions than it answers. For example:

- "- Does a provider always get a 'plan of correction' before being assessed a civil penalty?
- "- Are there violations that will result in an immediate penalty assessment?
- "- How long does a provider have to comply with a 'plan of correction'?
- "- Is there any civil penalty for being out of compliance the first time that DSS makes an inspection, or does a provider simply get a 'plan of correction' at that time?
- "- If a family child care home has no exemptions, does the provider still have to provide the form to parents?
- "- If a provider is cited for lack of proof of parental notification in children's files, is the provider assessed a \$50 penalty for each child whose file did not contain the information, or is there on single \$50 penalty for any such citation?

"In light of this lack of clarity, 22 CCR Sect. 102419(d)(3) fails to give fair notice to family child care providers of what to expect if they are out of compliance with the regulations. One solution would be for DSS to make the compliance features congruent for both family child care providers and child care centers, by subjecting both to 22 CCR Sect. 101193-5. In the absence of such a change, DSS needs to specify more precisely the timetables and procedures that will apply to 'plans of correction' and civil penalties in family child care." (Branch)

Response:

The Department respectfully disagrees with the above comment that the regulations are not clear. Family child care home licensees receive a plan of correction with a due date for completion for violations of Sections 102419(3)(A), (B), or (C). Civil penalties are only assessed for violations of the regulation when the licensee fails to meet the plan of correction due date.

The violations resulting in immediate civil penalty assessments are as follows:

- Senate Bill 933, Chapter 311, Statutes of 1998, specifies in part that a licensee's failure to submit fingerprints for any adult associated with or living in a child care facility shall result in the citation of a deficiency and an assessment of civil penalties in the amount of \$100.
- Pursuant to Section 101157(c) (Child Care Center Regulations) and Section 102357 (b)(1) (Family Child Care Home Regulations), an immediate assessment of a \$200 civil penalty will be made for operating an unlicensed child care facility.
- Repeat violations of Section 102419(3)(B) or (C) (Family Child Care Home Regulations) and Sections 101195 (c)(d)(e)(f) and (f)(1) (Child Care Center Licensing Regulations) will result in an immediate civil penalty assessment.
- Plan of correction time frames depend on the impact on the health and safety of children in care. Any deficiency subject to an immediate civil penalty is an eminent threat to the health and safety of children in care and must be corrected immediately or within 24 hours. Examples of "eminent threat" include uncleared adults associated with or living in the child care facility, accessible swimming pools, poisons or toxic materials, or overcapacity. For violations that do not pose an eminent threat to the health and safety of children in care, the plan of correction date may be up to 30 days from the date of the deficiency citation. Examples of these deficiencies are records keeping, minor physical plant repairs that need to be done or toys that need to be repaired or replaced.
- Family child care home licensees are not exempt from the proposed amendments regarding parents' rights notification regardless of whether or not anyone associated with or living in the home has a criminal record exemption.
- A provider is assessed a single \$50 civil penalty for each violation of the proposed amendments; the civil penalty is based on each violation, not the number of children's files reviewed that revealed failure to have the required parents' rights documentation.

Title 22, Division 12, Chapter 3, Family Child Care Home Regulations, are not subject to the provisions of Title 22, Division 12, Chapter 1, Child Care Center Regulations. Family Child Care Home Regulations stand alone. For this reason the CDSS cannot apply any Child Care Center Regulations to family child care homes.

Sections 102419(d)(3)/101218.1(e)(3)

209) Comment:

"... the compliance enforcement provisions of the family child care home regulations, 22 CCR Sect. 102419(d)(3), should be clarified so that providers know precisely what to expect.

"- In contrast to the rules for child care centers [22 CCR Sect. 101218.1(e)(3)], where compliance is governed by DSS' general civil penalties [22 CCR Sects. 101193(d)(4) and 101195(c) – (e)], the family child care regulations add a brand new set of provisions that leave many open questions. DSS should either clarify its family child care rules, or incorporate by reference the same civil penalties regulations that apply to child care centers." (Branch)

Response:

Please refer to the last paragraph in response to Comment 208).

210) Comment:

"We especially are concerned about the fines that have been suggested. And they're stiff penalties, especially considering that we need care in poverty areas. The people that are -- the providers that are in these areas don't have funding. And to impose daily fines in the area that we have been -- suggested of 150 dollars and 100 dollars would certainly have a huge impact on the whole community. I venture to say that if that happened in the neighborhood, probably every single provider there would be considering leaving the field." (Foley)

Response:

Civil penalties are only assessed for failure to complete the plan of correction in a timely manner and for repeat violations.

211) Comment:

"So, at any rate, I strongly urge that the fines be suspended or lowered, until we can get -- we haven't had time to get legislation that's satisfactory. And the climate is not such that we've got somebody running for office who is concerned about being elected, and taking a stance that is tough on crime when, in fact, they're shooting the chickens and letting the wild turkeys run free. So we're very concerned ..." (Foley)

Response:

Please refer to response to Comment 210).

212) Comment:

"... on the fine, I think, it is a lot of money that the provider need to pay. And provider working hard, and with long hours, but actually the provider doesn't make good money. So the fine, I would think, is too heavy to put on our providers." (Tseng)

Response:

The Department believes that the amount of the civil penalties, in light of the violations cited, are not onerous. Civil penalties are only assessed for failure to complete the plan of correction in a timely manner and for repeat violations.

Section 102419(e)

213) Comment:

"This section should specify that the inspection of a family child care home shall be limited to that portion of the home which reasonably relates to the provision of child care or child-related services. " (PACE)

Response:

Family Child Care Home Regulations Section 102391(c) specifies that the licensee shall permit the Department to inspect any part of the family child care home in which family child care services are provided or to which children have access.

Finding of Emergency

214) Comment:

"The Department makes no case for the emergency. The only position advanced is that the Appellate Court found against the Department and has 'opened the door to a parent's right to know,' and that the decision must be implemented immediately. The Court only declared that the Department must notify parents of this right, not that licensees shall so notify. The Court makes no finding of dangerous persons lurking in facilities, of a higher incidence of fowl play by exempt vs. regular employees, or that the Department is clearing inappropriate people to the detriment of children. The Court provided no declaration of an emergency.

"If the Court did not provide authority, who does? Normally, for the regulatory process, the Legislature declares an emergency and authorizes, on an urgency basis, the Department to promulgate emergency regulations. Such is not the case here. Two bills designed to deal with this problem --SB 1355 (Dunn) and AB 1545 (Florez) -- failed passage; so the Legislature clearly did not see this as an emergency.

"Well then, how about the Governor? The Governor's spring moratorium and review of the exemption process did not include a declaration of emergency. He did not state that the Department was clearing dangerous people and that California's children were in 'clear and present danger.'

"There is no detail provided by the Department in this section about how the health and safety of children in licensed child care facilities are at risk. Notwithstanding articles appearing in the Orange County Register, there has never been a showing that exempt employees -- those cleared and authorized for employment by the Department -- are as dangerous as to create a child care emergency. If that were so, the regulations would call for the immediate removal of all exempt employees.

"Accordingly, PACE challenges the authority for emergency regulations and, to the extent that these regulations rely on such a finding, respectfully requests their withdrawal." (PACE)

Response:

Please refer to response to Comment 118).

Informative Digest

215) Comment:

"The Digest says these amendments are necessary to implement the Department's policy requiring licensees to inform parents about employees with criminal exemptions. Speaking only to the criminal background exemption issue, we submit that the Department cannot have a policy on this yet. We challenged, in a letter dated March 27, 2002 the Department's authority to issue a Departmental Directive to licensees and asked the Department to withdraw it. The Department never responded to our letter/demand. The Directive was not withdrawn but, clearly in recognition of its legally shaky grounds, enforcement was held up until emergency regulations were promulgated.

"This is the first opportunity for PACE to challenge the emergency regulations (See above) and so we now do so." (PACE)

Response:

Emergency regulations were promulgated pursuant to Government Code Section 113461.1. Please refer to response to Comment 118).

The CDSS responded to the March 27, 2002 letter submitted by PACE on May 7, 2002.

Authority



216) Comment:

"We incorporate by reference our testimony that the Department has no authority to promulgate these regulations, see On Finding of Emergency, above." (PACE)

Response:

Please refer to response to Comment 118).

Initial Statement of Reasons

217) Comment:

"For convenience, we shall combine our comments on sections proposing regulations on criminal background exemptions, as follows: Sections 101218.1(b)(8), 101218.1(c), 101218.1(d), 101218.1(e), 101218.1(e)(1), 101218.1(e)(2), 102419(a)(8), 102419(c), 102419(d), 102419(d)(1), and 102419(d)(2). Please construe our comments to apply to each of these sections.

"a) Specific Purpose and Factual Basis That Regulations Are Necessary

"The specific purpose of the proposed regulations is clear. However, with regard to the criminal background exemption notification, the factual basis is unsupported on two grounds:

"1) The Court did not require licensees to release this information. The Department was required to make this information available to parents. The Department may point to the Governor's spring directive which required emergency regulations 'to require child care providers to inform parents...' We have already argued that there are no grounds – either from the Governor, the Legislature, or the Court --for emergency regulations. The Governor specified a method of dispensing such information to parents in response to newspaper headlines and without benefit of information on the deleterious impact on businesses, licensees, and employers. That is the purpose of the rulemaking process. Finally, when public testimony was given on SB 1355, Senator Dunn specifically rejected the idea of licensee release of information.

"2) The Court only required information on persons exempted since 1995. Clearly, the Court was using a balancing test, weighing the rights of parents to choose safe environments for their children and the rights of employees to protection against unwarranted, discriminatory disclosure, if the Department cleared them for service. The Court obviously recognized that (1) persons exempted by the Department from crimes committed prior to 1995 represented a lower liability, (2) their crimes were 'old,' (3) they probably have served in centers successfully over several years, and (4) the harm done by disclosure would hurt these older employees more. The Department has chosen to exceed the Court's demand and promulgate a policy that is harmful to employees excepted prior to 1995." (PACE)

Response:

Comment #1. Please refer to response to Comment 13).

Comment #2. Please refer to response to Comment 1).

Local Mandate Statement

218) Comment:

"The disclaimer says that the regulations do not impose a mandate on local agencies or school districts. To the extent that there are school districts operating child care centers, this may not be a true statement." (PACE)

Response:

The CDSS believes that the local mandate will not impose a significant fiscal impact within the meaning of Government Code Section 17500, et seq.

Statement of Alternatives Considered

219) Comment:

"The APA requires the Department to determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of CDSS, would be more effective in carrying out the purpose or would be as effective as and less burdensome to affected private persons than the proposed action. The Department simply repeats its obligation here but makes no effort to identify any reasonable alternatives considered. The Department fails this APA requirement.

"Absent specification of alternative that have been considered and/or rejected, we have no ability to refute choices or to pick between alternatives. If the Department cannot think of alternatives, here are two which would be less onerous and burdensome, and ones which would meet the Court's order:

"- Require local licensing offices to maintain a current list of exempt employees (since 1995) and the facilities with which they are affiliated.

"- Post a listing of all exempt employees on the Department's website.

"These alternatives do not violate confidential and working relationships between employer and employee, and do not create a potential legal liability for employers." (PACE)

Response:

The CDSS considered possible alternatives. The procedures and protocols adopted by the CDSS are those that afforded the opportunities other alternatives did not. For example the CDSS considered requiring providers to provide exemption information to parents even if they didn't ask. Additionally, the CDSS did consider posting a list of all employees with an exemption on the Department's website. The proposed amendments provide parents and authorized representatives with direct, immediate access to information in order to make informed choices about the placement and continued care of their child in a licensed child care facility.

#### Statement of Significant Adverse Economic Impact on Business

##### 220) Comment:

"The APA requires the Department to determine that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses. First, the Department says the action will not have a significant, statewide adverse economic impact. 'Statewide impact' is not the test. Second, the Department says it has made an initial determination of 'no significant impact.' How? On what grounds?

"Section 11346.5(a)(8) of the Government Code requires that 'the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.' Section 11346.5(a)(9) GC requires 'a description of all cost impacts ... that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.' No such material is in the record. Therefore, the Department fails this APA requirement.

"We have provided for the record, in an earlier section, details on adverse economic impact on small businesses and individuals. We believe the burden falls to the Department to refute our statement of adverse economic impact." (PACE)

##### Response:

Please refer to responses to Comments 14) and 218).

## Identification of Documents on Which the Department is Relying

### 221) Comment:

"The Department cites the CBS case (91 Cal.App.4th892) as the authority upon which it relies. That case, however, stated only that parents have the right to know whether the facility they are considering has a person who serves with a criminal background exemption. The Department must release the names of the persons and facilities with which they are affiliated for any persons so exempted since 1995.

"The Department, through these regulations, has chosen to require the release of the names of ALL exempted employees (without authority or court requirement) and require providers to make such disclosure (again, without authority or court requirement). Once again, the Department chooses to implement part of the court's order and chooses to neglect another part (e.g., exclusion of cases older than 1995)." (PACE)

### Response:

Please refer to responses to Comments 1) and 13).

### g) 15-Day Renotice Statement

A 15-day renotice was not required since no substantive changes are proposed to the regulations following the October 15, 16, and 17, 2002, public hearings.